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Canada. Royal commission on transportation.
Summation and arguments. v. 1-2 1961.

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Hon C. P. McTaggart

ROYAL COMMISSION

ON

TRANSPORTATION

SUMMATIONS AND ARGUMENTS

VOLUME No.:

1

DATE:

14 FEB 1961

OFFICIAL REPORTERS

ANGUS, STONEHOUSE & CO. LTD.

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ANGUS, STONEHOUSE & CO. LTD.
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MASTER INDEX

VOLS. 1 to 4

SUMMATIONS AND ARGUMENTS

VOLUME NO.

Province of Manitoba

1

Provinces of:

Maritimes Transportation Commission.)

Ontario.)

Saskatchewan.)

Alberta.)

British Columbia.)

2

C.P.R.

3

C.N.R.

Canadian Trucking Associations.)

North-West Line Elevator Association.)

B.C. Lumber Manufacturers' Association et al.)

Saskatchewan Timber Board.)

Great West Coal Company Co. Ltd.)

Manitoba and Saskatchewan Coal Co. Ltd.)

Alberta Wheat Pool.)

Manitoba Pool Elevators.)

Saskatchewan Wheat Pool.)

United Grain Growers Ltd.)

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ARGUMENT
On Behalf
of the
PROVINCE OF MANITOBA
to the
ROYAL COMMISSION ON TRANSPORTATION

A. V. MAURO

Of Counsel for the
Province of Manitoba.

February, 1961.

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ARGUMENT ON BEHALF OF THE GOVERNMENT OF THE PROVINCE
OF MANITOBA TO THE ROYAL COMMISSION ON TRANSPORTATION,
OTTAWA, FEBRUARY, 1961.

PART ONE

CHAPTER I

NATIONAL ECONOMIC POLICY

Definition of National Economic Policy

1. During the hearings of the Commission held in Winnipeg on February 8, 1960, the Premier of Manitoba, the Honourable Duff Roblin, introduced his submission, on behalf of the Government of the Province of Manitoba, in the following words:

" In September, 1958, the Canadian railways applied to the Board of Transport Commissioners for an interim increase of 19 per cent in the general level of freight rates and 25 cents per ton on coal and coke to yield an amount calculated to meet the estimated costs of increased wages to the non-operating railway employees which were pending as the result of negotiations with the union and the recommendations of a Conciliation Board. The Board, after hearings in October, allowed a horizontal increase of 17 per cent plus 22 cents per ton on coal and coke by order effective December 1, 1958. All the provinces, except Ontario and Quebec, immediately appealed this decision to the Governor in Council, requesting that the increase be rescinded or suspended."

" It was the submission of the provinces to the Governor In Council that there must be a halt to the present method of granting freight increases by means of horizontal percentage increases. They indicated that since 1948 freight rates had been increased by a cumulative total of 157 per cent and that with each increase there was a further attrition and erosion in the traffic moved by rail with the result that in the hearings of October, 1958, it was admitted by the railways that about 75 per cent of the proposed increase would be extracted from 32 per cent of the traffic. It was further submitted that the major part of this ever-shrinking 32 per cent was traffic from or destined to the Western Region and the Maritime Region; those areas not having the extensive road systems of the Central Provinces nor the benefits of a highly developed water route. These regions represent the so-called "captive traffic" for railway transportation, and it was those same regions which have been constantly compelled to compensate the railways for any deficiencies in revenues."(1)

2. The Premier went on to say:

" The provinces further submitted that general freight rate increases by means of the horizontal percentage method had and would continue to have a detrimental effect on the economic growth and development of the Western and Maritime Regions. If long established national policy for regional economic development and expansion was not to be frustrated, a critical re-appraisal of Canada's transportation system and its problems was imperative."(2)

3. The Governor In Council dismissed the appeal and allowed the Board's order to become effective on December 1, 1958. As a result of the plea of the eight provinces for a complete revision of the freight rate structure, the Government established a Cabinet Committee to report on a plan to ease the impact of the latest increase on specific areas and undertook to appoint a committee of experts to conduct a long range study of the distortions in the freight rate structure which had arisen as a result of the post-war horizontal rate increases.

4. In an announcement dated November 26, 1958, the then Acting Prime Minister, Honourable Howard Green, said in part:

" A study is being undertaken at once to work out measures to relieve against inequities in the freight rate structure including any that may be aggravated by the present increases. Steps are also being taken to set up a suitable body to review the general field of railway problems and policy. This study will include not only a comprehensive consideration of the railway freight rate problem - including the situation of the long haul provinces in the west and in the Atlantic region - but also other specific problems which require solution if Canada's railways are to serve the national interest without prejudicing particular industries or areas."

5. Subsequently on May 13, 1959, by Order-In-Council PC 1959 - 577, this Royal Commission was authorized. The terms of reference read in part as follows:

" The Committee of the Privy Council have had before them a report from the Right Honourable John G. Diefenbaker, the Prime Minister, stating that it is in the national interest that a comprehensive and careful inquiry be made . . . into problems relating to railway transportation in Canada and the possibility of removing or alleviating inequities in the freight rates structure."

Term (a) states that the Commission shall consider and report upon:

" Inequities in the freight rate structure, their incidence upon the various regions of Canada and the legislative and other changes that can and should be made, in furtherance of national economic policy, to remove or alleviate such inequities."

Term (b) of the reference directs the Commission to consider and report upon:

" The obligations and limitations imposed upon railways by law for reasons of public policy, and what can and should be done to ensure a more equitable distribution of any burden which may be found to result therefrom."

6. It is submitted that the dominant theme of the terms of reference and the consistent theme throughout the statements by the provinces in their appeal to the Governor In Council in November, 1958, is that of "national Economic policy". It is clear that the governing phrases of the terms of reference establishing this Commission are "national economic policy" and "public policy" and that these phrases, for the purposes of this Commission, are synonymous.
7. The first matter which requires definition is therefore "national economic policy". We submit that it is essential as a condition precedent, that this Commission first determine what has been and what is "national economic policy" in Canada. Having determined this factor in the terms of reference, the Commission can then properly consider the role of transportation in relation to "national economic policy" and make recommendations consistent with that policy. While it would be presumptive to offer a single statement in definition of "national economic policy", it may be summarized as a policy or plan, or as a series of policies or plans, the object of which is to secure the development of Canada for all Canadians. "National economic policy" is concerned with national development, with the utilization of our resources with a view to improving the standard of living of all Canadians regardless of geographic location. This definition stresses the development of Canada for all Canadians; it emphasizes the utilization of our natural and human

resources to improve the well-being of all Canadians in all regions of the country. "National economic policy" in Canada since 1867 has consistently been designed to foster and promote the development of the various regions of Canada for the benefit of the entire nation. It has never been the intention that one area of the country should be preferred at the expense or exclusion of another area.

Role of Transportation in Furtherance of National Economic Policy

8. This national policy is illustrated by reference to the construction and operation of Canada's railways and the historic role which they have played in the furtherance of "national economic policy". Canada, by the very nature of its vast distances, its small and scattered population, the location of its natural resources and its dependence upon export markets, has been a difficult country for which to furnish transportation. The geographic nature of the country is such that transportation has always played, and will continue to play, a major role in its economic growth.
9. In view of its importance, transportation has been closely interwoven with the economic, political and social life of the country throughout its history. From the earliest days of settlement, the governing bodies of the country have taken an active part in providing transportation by water, highway and rail, and more recently by air and pipeline. In the process, a national transportation system has been built up by a combination of public and private initiative with various forms of government assistance.
10. The principal requirements for an effective national transportation system may be stated as follows:
 - (a) It should permit access to markets by the most direct routes and by the most efficient means which the potential traffic will sustain.
 - (b) It should provide that combination of transportation facilities which yield maximum economies to

producers and consumers and reasonable returns
on invested capital.

Provision of Transportation Facilities in Canada

11. Historically, the provision of transportation facilities has been dominated by the desire to link together the former British North American colonies into a cohesive political and economic unit. The system reflects a deliberate effort to avoid the powerful forces tending to bring about an absorption of the several provinces into the economy of the United States. As a result, a fundamental and persistent problem has existed in the history of Canadian transportation. This problem is focused on the interplay of two divergent concepts: profit motivation as evidenced in commercial principle on the one hand; and the public policy objective of national unity on the other.
12. In the first stages of the country's history, waterways provided the most important form of transportation. At an early date, however, it was recognized that economic growth depended to a large extent upon the construction of railways. The large productive areas of the country could be served only in a limited way by its system of waterways.
13. The fear of economic and political annexation by the United States led the scattered colonies of British North American in the latter half of the nineteenth century to consider the formation of a larger and stronger economic and political unit. In these considerations, cheap, reliable, year-round transportation was an essential element.

" The decision to build the railway entirely through Canadian territory was of fundamental significance. Before Confederation, the colonies had been faced with two broad alternatives. One was to be drawn into the economic orbit, and probably also into the political system, of the United States. This would have lead to integration, in each area according to its particular characteristics, with the common neighbour. The economic development of each region would have been determined by the relationships it managed to establish with the country to the south. On the eve of Confederation, it seemed that the price of such relationships would not be less than

political assimilation. This consideration turned the colonies to the other alternative which was to ensure political independence through a union of their own and to seek strength and prosperity by a national economic integration based on an expanding inter-regional trade. The pull to the south was strong. The establishment of an east-west integration would require bold and far-sighted policies of national development". (3)

14. Prior to Confederation, the Grand Trunk Railway had become an important line, serving the people of both Canada and the United States. After Confederation, the Intercolonial Railway was constructed with public funds, largely for the purpose of bringing more closely together, politically and commercially, two separate sections of the country. Construction of this railway linked the newly formed Maritime Provinces with the former Canadas and was an attempt to meet the political and economic requirements of the public policy of the new Dominion. A railway project of much greater magnitude and significance, an all-Canadian transcontinental line, was projected by the Government and completed by a private company, the Canadian Pacific Railway, with extensive public assistance.
15. In the early days of Confederation, national policy was concentrated mainly on fostering the political unity and economic integration of the newly united provinces. Both these objectives required the flow of trade and traffic in east-west channels and therefore necessitated the creation of transportation links between the different parts of the country. The central importance of transportation in Confederation is evidenced by the fact that the provision of rail transportation facilities was a condition of entry for both the Maritime Provinces and British Columbia and by the emphasis on the construction of an all-Canadian line, built with substantial Government assistance. Due to the distances which separate Canada's producing territories and consumer markets, development of the country's

resources depended upon railway construction and low transportation charges. The people of Canada have given such aid as was necessary to procure adequate transportation facilities that would develop the country's resources and facilitate the flow of products to market.

Historical Development of National Economic Policy in Transportation

16. The specific public policies of the various federal governments since Confederation have at times varied but the ultimate goal in each case was to maximize and equalize opportunities and benefits for all Canadians in all regions of the country.

Early Canals and Public Policy

17. Water transportation was of primary importance in the early stages of Canada's development. In the case of the Maritime Provinces, the sea provided the route for trade and settlement. In the Provinces of Upper and Lower Canada, the Great Lakes and the St. Lawrence River waterways gave access to the principal areas of colonization. In the Prairie Provinces and British Columbia, river valleys and regions adjacent to lakes were the chief areas of settlement. In order to facilitate the maximum use of these waterways and to overcome such natural hazards as rapids and shallows, it was imperative that canals be built.

" The Canadian and Imperial Governments built nearly all the canals of the St. Lawrence system as public works. Those, such as the first Welland Canal, which were built by private companies, received help from government and were without exception taken over as public works.

The magnitude of these works and the lack of adequate private capital made state action necessary and inevitable. Military needs often reinforced the need for state action."(4)

18. During the period of major canal construction, the central national objective was to divert traffic from the United States waterways to the St. Lawrence system. Canals were an instrument of public policy directed, within existing limitations, to making transportation facilities available to all reas on an equal basis. In the furtherance of national economic policy, construction and maintenance of the extensive canal system in Central Canada was assumed in full by Government. There was no attempt to

recoup costs and the system was operated as toll free waterways.

To the end of March, 1957, the total capital expenditure on the canals system by the Federal Government was \$ 242, 104, 349. (5)

This figure represents the original cost of construction and does not include cost of maintenance and improvements. In addition, the Federal Government through the St. Lawrence Seaway Authority of Canada, is responsible for a portion of the cost of construction of the St. Lawrence Seaway. The cost to the federal government of this project is \$ 322, 000, 000 of a total of \$ 1, 054, 000, 000. (6)

Construction on the Seaway has been premised on the basis of a self-liquidating project, the cost of which is to be recovered from the imposition of tolls on shipping.

Early Railways and National Economic Policy

19. Following Confederation, while waterways continued to play a strong supporting role in transportation, the construction of railways emerged as the major element in national policy.
20. Government policy in the construction of railways prior to 1867 has been outlined by Professor Morton at page 4418, Volume 30 as follows:

" In the period before Confederation... railways were either built and operated as public works or a private company was made an agent, or to speak more precisely, a partner for the time being, of the state, in providing railway transport.

Q. What of the policy followed by the Canadian Government in the field of railway construction during this period?

A. Well, I think the Guarantee Act of 1849 is a clear example of the relation which was developing between governments and private railway companies in British North America. The Act begins by stating the need of government assistance for railway construction in a sparsely settled country where capital was scarce. It provided that the government might guarantee the bonds of any railway, once seventy-five miles had been built, up to half the cost of the railway, at a rate of interest not to exceed 6 per cent. Provision was made for a sinking fund and a mortgage on the lines of which the bonds were guaranteed, although in fact the Act was applied in a most flexible manner. Municipalities were also allowed to assist railway construction and

were assisted to do so by the creation in 1852 of the Consolidated Municipal Loan Fund."

" The construction of the Grand Trunk Railway was the outstanding example of how Canadian governments aided the construction and operation of railways by private companies to a degree which exceeded the help given railways in the United Kingdom and even in the United States. The company was given a bonus of \$3000 a mile, about one-third the cost of construction, and government support extended in other ways."

" When the Grand Trunk encountered early financial difficulties, guarantees of a new bond issue at 6 per cent were made in 1855. In 1856 a further guarantee and an outright grant were voted, and further aid given in 1857."

" The construction of the Grand Trunk was an act of provincial policy, designed to give Montreal a share in the trade of the American Middle West and a winter port in Maine by meeting the competition of American railways and canals."

Confederation and the Intercolonial Railway

21. The union of the provinces of British North America was a complex event. Political union of British North America would improve its credit position and permit railway construction while railway construction would provide the economic basis for political union.

22. In the early post-Confederation era, railway construction held a dominant position in the political and economic policy of the Dominion Government. As a condition of Confederation, the Dominion Government undertook to build the Intercolonial Railway. The obligation by the Government to the Maritime Provinces was discharged in part by building this railway from Halifax, Nova Scotia, to the St. Lawrence River at Riviere du Loup, Quebec. Section 145 of the British North America Act of 1867 sets out this obligation as follows:

" Inasmuch as the Provinces of Canada, Nova Scotia and New Brunswick have joined in a Declaration that the Construction of the Intercolonial Railway is essential to the Consolidation of the Union of British North America, and to the Assent thereto

of Nova Scotia and New Brunswick, and have consequently agreed that Provision should be made for its immediate Construction by the Government of Canada: therefore, in order to give effect to that Agreement, it shall be the Duty of the Government and Parliament of Canada to provide for the Commencement within Six Months after the Union of a Railway connecting the River St. Lawrence with the City of Halifax in Nova Scotia, and for the Construction thereof without Intermission, and the Completion thereof with all practical Speed."

23. The investment in the line was exceedingly large, reaching a total of \$ 108, 000, 000 by 1916 for 1, 450 miles of track. This outlay was due primarily to the circuitous route which was chosen to avoid crossing into the United States. From the point of view of political consolidation of the four provinces, there were strong arguments for mutual commerce and trade. In addition to these considerations, construction of the Intercolonial made possible the introduction of a common tariff policy. As a source of revenue, the tariff helped to finance the railway and as a protective measure it helped to create traffic and direct it to the new line. The freight rates which applied to traffic moving over the line were set on a relatively low basis so that shippers were not required to pay for the additional miles of transportation occasioned for reasons of public policy.
24. This railway, built and operated by the Government, was not designed as a commercial venture. The financial implications of public policy in this instance were threefold: (1) The Government incurred the cost of constructing the line; (2) because of the circuitous route users could not be required to meet the full cost of operation and maintenance; and (3) the Government was committed to meet recurrent deficits.

The Pacific Railway and National Economic Policy.

25. It was fully recognized that a railway to join the Atlantic to the central provinces and a Pacific railway that would incorporate Rupertsland and

British Columbia were necessary to achieve the union of British North America.

... " the coming of railways had made practicable the hitherto vague project of acquiring Rupert's Land and of linking up with the colony (of British Columbia) on the Pacific. They would also furnish winter access to the sea through the Maritimes. By bringing this area, stretching from sea to sea, under a single government, vast new possibilities for expansion would be opened. The trade of the Orient would be tapped and a great internal market, integrating the occupations and resources of all the colonies, would be established." (7)

26. As previously stated, the Atlantic railway was the Intercolonial which was built and operated by the Government. The Pacific railway was no less necessary, but was an even more complex and enormous undertaking. The acquisition of the Northwest and union with British Columbia had to be negotiated first. Then the longest railway of its time had to be built over some of the most difficult terrain on the globe. Manitoba entered Confederation on the understanding that a railway would be built to connect it with the outside world. Its public lands, like those of the North-West Territory, were reserved for the purposes of the Dominion, that is, for homestead and railway land grants. When British Columbia entered the Dominion in 1871, the terms of union required the national government to begin a railway to the Pacific within two years and to complete it in ten. Railway construction was thus an integral part of national union and national expansion.

27. This plan for national development and the role of the transcontinental railway in its implementation have been described in the Report of the Royal Commission on Dominion-Provincial Relations as follows:

" The first of these policies was to provide east-west channels of trade independent of the United States by building a transcontinental railway wholly over Canadian territory. Such a railway would open the undeveloped lands of the West for settlement and fix the political and economic destiny of the area. But the construction of such a line over empty distances and forbidding mountains could not be undertaken

without extensive public assistance. This fact pointed to the second policy which was indeed an essential complement of the first. The public lands of the Northwest were to be used by the Dominion to promote railway expansion and rapid settlement. Land grants would provide the greater part of the public assistance required by the railways. The railways, in turn, would make the lands valuable and a free home-stead system would attract a rush of settlers. The decisions to build an all-Canadian railway and to establish a vigorous Dominion land policy were basic national decisions which, together with the adoption of the protective tariff which was soon to follow, fixed the pattern of subsequent economic development in the Dominion." (8)

28. The MacDonald Government's policy respecting completion of the Pacific railway was outlined during the debate on the Act of 1881⁽⁹⁾ which ratified the agreement the Government had made with the Pacific syndicate, which ultimately became the railway company. Sir Charles Tupper, Minister of Railways and Canals, declared that "the great national work, the Canadian Pacific Railway ..." should be constructed ... "through the agency of a private company aided by a grant of land and money." To that statement Prime Minister MacDonald added that the company "would get a fair and full return for all their risk, for all their expenditure, and for all their responsibility".⁽¹⁰⁾ The Canadian Pacific Railway Company was thus, in present day language, to be the chosen instrument of national policy in fulfilling the purposes and obligations of the Dominion. Not only was the company to build the railway, it was, in the language of the Act "... hereafter and forever ... to ... efficiently maintain, work and run the Canadian Pacific Railway."⁽¹¹⁾ This obligation in perpetuity was made even more solemn by the matching exemption of the Company's railway property from taxation in the North West Territories also in perpetuity.
29. The line, privately owned and operated, was to be a national line built as part of a national policy to fulfil national purposes. The undertaking was large and the immediate potential traffic small. Prospects of profit on the new railway seemed unattractive. The Government, in keeping

with its policy, offered generous inducements to the investors to undertake the venture. The benefits received by the company under the terms of the contract with the national government were as follows:

A subsidy of \$25 million; 25 million acres of land in Western Canada; 713 miles of railway constructed by the Government from Selkirk to Lake Superior, Kamloops to Port Moody and Selkirk to Emerson, later valued at \$ 37,785,320; the lands required for the roadbed, stations, station grounds, workshops, freight yards, docks and other structures. In addition, the company was to receive admittance, free of duty, of steel rails and other materials used in the construction of the railway, telegraph lines, and telegraphic apparatus; tax exemption forever of capital stock, stations, station grounds, workshops, buildings, yards and other property, rolling stock and appurtenances; tax exemption for twenty years or to the time of sale or occupancy of lands of the company in the North West Territories. Finally, the company was granted a territorial monopoly of railway construction and operation in Western Canada for twenty years.

Early Freight Rate Policy

30. The period from 1867 to 1896 was characterized by large public expenditures on transportation facilities in the form of subsidies, land grants, and other forms of assistance by the national government. Not until 1879 was an attempt made by the Government to limit the rates charged by the railways, although under the British North America Act of 1867 (Section 92.10 (a)), the Dominion Government was given complete jurisdiction over inter-provincial railways. The main source of control on rates in Eastern Canada was exerted by competition from the canals and existing American railways. However, competition as a form of control of rates proved inadequate, for in many instances, areas in Eastern Canada were served by only one railway, while in other instances

the railways, through co-operative arrangements, determined the level of freight rates, the charges for individual shipments, and the quality of service.

31. Public complaints about the level of freight rates began in the 1870's. This led to legislation in 1879 which introduced moderate and indirect tariff control by limiting the level of dividends. Under the Consolidated Railway Act, power was given to the Governor-General-in-Council to limit rates to a level which would permit the railway companies dividends of not more than 15% on capital expended on construction.⁽¹²⁾ This clause was dropped in the 1888 revision of the Act, but it was retained in the charter of the Canadian Pacific with the rate fixed at 10%. These measures, however, failed to remove regional discrimination since the rates were higher in Western than in Central Canada due to the absence of rail and water competition in the West. It was not until the Crow's Nest Pass Agreement of 1897 that an attempt was made by Government to alleviate the burden occasioned by regional discrimination of rates in Western Canada.
32. The importance of rate regulation to the Province of Manitoba and the Northwest region was described by Professor Morton in his submission as follows:

" Q. Professor Morton, why was rate regulation of importance to Manitoba and the Northwest in particular?

A: The reason for this was partly the geographic position of Manitoba. Its remoteness, however, was as accessible to American as to Canadian railways, and it might theoretically at least have expected to enjoy the benefits of competition. But another part of Canadian national policy, and particularly after 1879, was the maintenance of a protective tariff. The tariff, of course, operated to diminish the flow of goods northward from the United States and so to diminish the competitive capacity of American railways to haul exports from Manitoba. The general effect was to make Manitoba and the Northwest, as the Prairie Provinces have remained, an area in which Canadian railways are sheltered from the competition of American railways. Equity thus

demanded some regulation of railway rates to offset this consequence of national policy. Even more urgent was the national need to encourage a flow of wheat exports to market in order to pay for the national development of Canada."(13)

First Attempts at Rate Regulation and the Crow's Nest Pass Agreement

33. Not until 1897 did it become national policy to seek to modify the monopoly position of the Canadian Pacific Railway in the West and to reduce the disparity between the rates charged in Central and Western Canada. Beginning in 1896, Canada experienced a period of unprecedented prosperity. A significant contribution to this national prosperity was made by the settlement and agricultural development of the northwest area of the country, which fostered economic expansion in the rest of Canada.

... " The settlement of the Prairies took place within the framework of the national policies of all-Canadian transportation and protective tariffs. The resolute application of these policies directed the growing demands for capital equipment, for manufactured goods, for distributive and commercial services into Canadian channels, thus bringing expansion in other parts of the Dominion."(14)

34. The settlement, development and rapid expansion of the Prairie region required large quantities of manufactured goods, both capital and consumer.

... " The protective tariff enabled Canadian manufacturers to capture the greater share of this new market, thus giving a tremendous impetus to industrialization in Ontario and Quebec, to the coal and steel industries of Nova Scotia and to the lumber industry of British Columbia."(15)

35. Owing to the long hauls from Western producing centres and the lack of competitive surface transportation facilities to foreign consuming markets, freight charges on the shipment of grain were high. The national policy for Western settlement and development required low freight rates in order to improve the competitive export position of Western grain producers. At the same time both the Canadian Pacific Railway and the Dominion Government were concerned about the growing domination by American railways and commercial interests in a segment of Canadian territory - the Kootenay Valley district of British Columbia.

36. In return for a cash subsidy, and a land grant for the construction of the Crow's Nest Pass line, into southern British Columbia, the Canadian Pacific Railway in 1897 entered into an agreement whereby the rates on specified commodities Westbound and on grain and flour Eastbound were reduced in perpetuity and the railway submitted to the future regulation of other rates. The novelty of this aspect of national policy of minimizing inter-regional differentials in freight rates, as well as its complexity, is given in the classic statement by Frank Oliver, Member of Parliament for Edmonton, during the debate on the Crow's Nest Pass contract in 1897.

... " There is no question of "railway or no railway" in this country now, wherever the circumstances will justify construction. The question is one solely of rates and management, and it is because the railway rates have been distinctly against the west in particular and in general from the first that Manitoba and the Territories have shown so much less rapid progress than was expected when the Canadian Pacific Railway was first aided. It is for the same reason that the trade of eastern Canada with the west has not increased as was hoped at the same time, partly because the trade is not there to be done, and partly because, owing to the more advantageous railroad situation of the United States manufacturing and commercial cities of Chicago, St. Paul and Spokane, a large proportion of the trade of the west is done with those cities. And as the duties are lowered a proportionately greater share of the trade will be done by them, unless the rates of transportation between eastern and western Canada can be reduced to a level very far below what they have yet been. A general and adequate cheapening of the rates from eastern and throughout western Canada would develop the west, and enable the east to reap the sole outside profit of that development. A failure to bring down the rates to the point of final effective competition with the lines of the United States is to fall short of the mark; is to continue to retard the west, and to divide its trade between eastern Canada and the United States, to the increasing advantage of the latter. It is because of the universal recognition of this fact that the prospect of a radical change in the condition of the western transportation problem was hailed with universal satisfaction throughout the Dominion; and it has simply been taken for granted by all parties that the Crow's Nest Pass line must be built, not because of the line itself, but because of the new railroad policy of which it was to be at once the announcement and the commencement. (16)

37. The reduced rates on grain facilitated expansion of the agricultural economy of the Prairie region. The reduced rates on westbound shipments of commodities ensured the manufacturing industries of Eastern Canada of the dominant share in the growing markets of the expanding Western region. Construction of the line secured for the Canadian Pacific Railway first claim upon the traffic benefits to be derived from the economic development of the Kootenay region. The Crow's Nest Pass Agreement was an application regionally of national economic policy from which Western Canada, the Canadian Pacific Railway and in fact the country as a whole were to obtain substantial benefits.

Railway Expansion In The 1900's And The Formation of the Canadian National Railways System.

38. By the turn of the 20th century national economic policy was operating effectively. Settlement and wheat production in the West were expanding rapidly and large sums of foreign capital were available. The Dominion Government was eager to expand railway facilities throughout the country as rapidly as possible. During the railway debates of 1903, Sir Wilfred Laurier stated the Government's policy and stressed the need for immediate action on construction of the National Transcontinental Railway:

..." we cannot wait, because at this moment there is a transformation going on in the conditions of our national life which it would be folly to ignore and a crime to overlook; we cannot wait, because the prairies of the North-west ... are now invaded from all sides by the white race. They came last year 100,000, and still they come in still greater numbers. Already they are at work opening the long dormant soil; already they are at work sowing, harvesting and reaping. . . We consider that it is the duty of all those who sit within these walls by the will of the people, to provide immediate means whereby the products of those new settlers may find an exit to the ocean at the least possible cost, and whereby, likewise, a market may be found in this new region for those who toil in the forests, in the fields, in the mines, and in the shops of the older provinces. Such is our duty;

it is immediate and imperative."(17)

39. This expansion of the West which the Dominion Government was anxious to encourage would bring substantial economic benefits to the other provinces. In the words of the Prime Minister:

" Our fertile prairies are becoming settled, and are going forward by leaps and bounds . . . these new settlers will grow cereals, and probably nothing else. They will have need of everything that is required by civilized men. They will have need of clothing, furniture, and every other kind of manufacture. Then, Sir, what shall we do? Shall we allow them to be supplied by our American neighbours, or shall we provide a railway which will enable our manufacturers in Ontario and Quebec to supply them with what they shall require?"(18)

40. In addition, it appeared to be in the interests of Ontario and Quebec for the Grand Trunk's projected rail line from Quebec City westward to the Pacific to be located to the north of the Canadian Pacific Railway so as to open up for settlement the "Clay Belt" between the Laurentians and Hudson Bay. To meet these regional demands, the Government undertook to build the eastern section of the line from Winnipeg to the Maritimes, on condition that the Grand Trunk would build the western section from Winnipeg to the Pacific. The Government further guaranteed interest on the bonds issued for construction of the Western section for 7 years. This interest guarantee amounted to \$13,000 per mile on the Prairie section, and to three-quarters of the total cost on the Mountain section. The entire cost of the Western section owned by the Grand Trunk Pacific, a subsidiary of the Grand Trunk, was to be met by the issue of bonds, guaranteed either by the Government or the parent company. The Eastern section was to be leased to the Grand Trunk for 50 years, free of rental for the first 3 years, and thereafter at 3 percent of the cost of construction which was \$ 160,000,000.

41. The Government provided assistance to the Grand Trunk Pacific Railway Company in conformance with the national policy of encouraging

the development of Canadian trade and the transportation of goods via all-Canadian channels. These conditions were stipulated in the agreement between the parties dated July 29, 1903:

" It is hereby declared and agreed between the parties to this agreement that the aid herein provided for is granted by the Government of Canada for the express purpose of encouraging the development of Canadian trade and the transportation of goods through Canadian channels. The Company accepts the aid on these conditions, and agrees that all freight originating on the line of the railway, or its branches, not specifically routed otherwise by the shipper, shall, when destined for points in Canada, be carried entirely on Canadian territory, or between Canadian inland ports, and that the through rate on export traffic from the points of origin to the point of destination shall at no time be greater via Canadian ports than via United States ports, and that all such traffic, not specifically routed otherwise by the shipper, shall be carried to Canadian ocean ports."(19)

42. At the same time the Canadian Northern was endeavouring to expand its operations into a trans-continental system:

... " By 1905 the Canadian Northern owned almost 350 miles of track in eastern Canada, including the skeleton of an Ottawa - Montreal - Quebec line and a line across Nova Scotia, while in the Prairies the track extended as far west as Edmonton. . ." (20)

43. By 1915 the remaining sections between Ottawa and Port Arthur and Edmonton and Port Arthur were completed. Throughout its history the Canadian Northern system was dependent upon public aid, direct and indirect. To the end of 1916 the railway had received subsidies amounting to \$ 31, 286, 720 from the Federal Government, \$ 6, 821, 724 from the Provinces and \$ 765, 704 from municipalities.

" The financing of the Canadian Northern was remarkable for a number of reasons. While the Canadian Pacific Railway have avoided bonded debt as far as possible, relying on stock issues to raise capital, the Canadian Northern was financed mainly by bonds and subsidies. Until 1914, when the federal government became a stockholder, the shares of the Company were issued exclusively to the original promoters (Mackenzie and Mann) ostensibly in return for their services of organization and management." (21)

44. As early as 1914 the two new trans-continental lines were in serious financial difficulties. Substantial amounts of direct loans and guarantees

of securities had been obtained from the Federal Government. By 1916 it was proposed that no further advances should be made, and it became apparent that it was necessary to re-appraise the policy of the Federal Government. In this regard, Sir Thomas White, the Minister of Finance, told the House of Commons:

... " With improving financial conditions and with better earnings in prospect, it was hoped that no material assistance would be required in addition to the aid which was given in 1914; but it is now clear, from the statements presented by the railway companies in question...from the financial conditions which still prevail, and from the fact that the war is still raging, that relief is absolutely necessary if these two railway companies are to continue as solvent and going concerns. It has been the policy of the Government since the outbreak of the war to maintain stability and to promote confidence in the financial and economic condition of Canada. We have, therefore...looked with growing concern upon the financial position of these two great trans-continental enterprises whose affairs have become so intimately connected with the public credit both of the Dominion and of the provinces of Canada. Securities to the amount of several hundred millions of dollars have been issued by both these companies and have found their way into the hands of investors in Great Britain, the United States and Europe. Any financial crisis in their affairs could not but react seriously upon the general credit of the Dominion in the eyes of the outside world."(22)

45. A Royal Commission (Drayton-Acworth) was appointed in 1916 to inquire into the general problem of transportation in Canada, with particular reference to the status of the three transcontinental railways, the question of their re-organization and their possible acquisition by the State. The majority of the Commissioners recommended that control of the Grand Trunk, Grand Trunk Pacific and the Canadian Northern "be assumed by the people of Canada". Their views on the exercise of control over the proposed enterprise were stated as follows:

... " In our judgment it is not in the interests of Canada that the operation of its railways should be in the hands of the Government. We know no country in the world, where a democratic State owns and operates its railways, in which politics have not injuriously affected the management of the railways and the railways have not had an injurious influence on politics. We do not think Government ownership of the Canadian railways would tend to reduction of rates, but rather in the contrary direction."(23)

46. The Commission stressed that the Canadian Northern was competitively weak in the East and would require additional assistance in order to meet competition from the Canadian Pacific and the Grand Trunk. At the same time, the inadequate Prairie branches of the Grand Trunk Pacific would continue to be in an extremely poor competitive position vis-a-vis the Canadian Northern and the Canadian Pacific in the West. The Commission were of the opinion that railway facilities in Canada had been overexpanded and that it was beyond the country's capacity to support three transcontinental lines.
47. From 1917 to 1923 the Dominion Government, through the process of receivership and ultimate financing, took over the operation of these hitherto privately-owned railways. In 1923, the publicly-owned railway properties, together with various subsidiary corporations, were formed into the Canadian National Railways system, under the control and direction of a President and Board of Directors appointed by the Governor-General-in-Council. Thus, the Federal Government, permanently committed to the provision of transportation facilities and bound financially in the construction of railways, had no alternative, in the face of the failure of private enterprise, but to take over the existing lines.

" The maintenance of public credit and of railway service to great areas of the country were the considerations which lead to this great, and to a degree, involuntary extension of national railway policy to include the public ownership and operation of a vast national system. Nothing on the other hand, could more forcibly illustrate the integration of national and railway policy in Canada. Since 1923 it has been government policy to maintain the publicly operated system in commercial competition with the privately operated Canadian Pacific, subject to the special demands for local services it is particularly difficult for a publicly owned railway to resist." (24)

Railway Expansion During the Period 1920 - 1929

48. After the formation of the Canadian National Railways System, there followed a period of intense competition between this railway and the Canadian Pacific Railway. There was some justification for expanding

facilities, especially for the construction of branch lines. The period of the 1920's was one of continued economic expansion, based as it had been at the turn of the century, on further Western settlement and development. Private investors and all levels of government were optimistic about the future of the nation and they were prepared to invest large sums of money in providing the necessary facilities and services. Among these facilities, transportation was foremost. During the period 1920 - 1929, railways invested approximately \$ 700, 000, 000 in road and equipment, while the Dominion spent \$ 236, 000, 000 on waterways and harbours.

49. There was intensive competition between the two railway systems in opening up new territory. The Canadian Pacific Railway stated before the Royal Commission of 1931 - 1932 that it was forced to construct branch lines which might have been deferred without injury to the public, simply as protection against the threat of invasion by the Canadian National Railways. The Canadian National defended its policy of expansion on the grounds that it was necessary in order to maintain the company's relative position with regard to its rival, the Canadian Pacific. The Commission's view was that the construction program of one company, especially in Saskatchewan and Alberta ...

" was responded to by an equal or greater program of construction of the other. The development of this territory did not meet expectations and the railways now find themselves with additional traffic mileage and an increased burden of capital charge." (25)

Once more, as in the case of the Grand Trunk and the Canadian Northern, railway facilities in the Dominion were expanded beyond the needs of the country.

Freight Rate Regulation and National Policy

50. As previously set out, the Crow's Nest Pass Act of 1897 referred to the setting up of a railway commission to regulate rates generally. In 1903,

as a result of studies by Professor S.J. McLean, the Railway Act was passed establishing the commission. Its work for the first years was light as the public demand was for railway construction rather than rate regulation, and it consisted mainly of considering discriminations in the freight rate structure among localities and classes of shippers. However, the Commission did not seriously modify the structure in Western Canada as it had been established by the Crow's Nest Pass Agreement. The chief modification in the rate structure had been forced by the Government of Manitoba whose grain producers were not satisfied with the reductions under the Crow's Nest Pass rates. The result of the Manitoba Agreement with the Canadian Northern Railway in 1901 was that from 1903 to 1918 rates lower than the Crow's Nest Pass rates were in effect in Western Canada.

" In the Western rates case of 1914, the Railway Commission established maximum general rates for the Prairie Section. These took account of the need of the two new railways, the Canadian Northern and the Grand Trunk Pacific, for high returns in the non-competitive areas of the West to meet their mounting costs of construction and operation... The case is perhaps the outstanding example of how the national policy of seeking to minimize differentials in transport costs among the regions of Canada has had to struggle with the real considerations of physical obstacles, the need of private companies for profit, and the difficulties of estimating a fair return on railway investment." (26)

51. The Eastern Freight Rates Case in 1916 resulted in permission to the railways to raise their rates east of Fort William. While the effect, in principle, was designed to achieve a greater degree of equality between the West and Central Canada, water competition in Central Canada meant that little use could be made of this permission.

" Thus the basic disparity of the general freight rate structure of Canada remained, as the premises from which the Commission worked did not permit them to equalize wholly the rates of western Canada with those of central Canada, and the national policy of regulation extended only to modifications of the differential and not to the use of positive means, by subsidy or statutory limitation, to remove the differential.

National policy, that is, pointed to the ideal of parity of rates among the sections, but the competitive rates of central Canada, together with its political preponderance in Parliament, stopped the realization of the ideal at the level of general rates reached in the Western and Eastern Rates cases." (27)

52. In conformance with this national policy, the Federal Government, from time to time, has introduced measures designed to ease the high cost transportation that has fallen on certain regions due to geographic location or to the absence of competition. By legislation in 1925, Parliament passed an act (28) which varied the terms of the Crow's Nest Pass Agreement. In introducing the Act, the Honourable G.P. Graham, Minister of Railways, stated that it was the Government's intention "to give the Board of Railway Commissioners a free hand in the equalizing of rates throughout Canada in order that all parts of the country may be equally situated with others." (29)
53. This continued desire of the federal authorities for parity of rates between various sections of Canada can be illustrated by reference to Order-In-Council PC 886 issued by the Governor-In-Council in 1925. It was a direction to the Board of Railway Commissioners of Canada and read in part as follows:
- ... "The Committee are of the opinion that the policy of equalization of freight rates should be recognized to the fullest possible extent as being the only means of dealing equitably with all parts of Canada, and as being the method best calculated to facilitate the inter-change of commodities between the various portions of the Dominion, as well as the encouragement of industry and agriculture and the development of export trade."
54. Once again while the approach to the ideal of sectional parity in rates was piecemeal and halting, at least these years had witnessed the acceptance by the Board of Railway Commissioners, encouraged by the Federal Government, of the policy of equalization of rates.
55. In 1927 an addition to statutory limitations was made as a result of the report of the Duncan Royal Commission on the condition of the

Maritime Provinces in Confederation. Under the Maritime Freight Rates Act, ⁽³⁰⁾ rates in the Maritime section, extending westward to Quebec, were reduced by 20 percent in order to assist the movement of commodities from the Maritime region to Central Canada and in the movement of commodities within the Maritime region. The Act, originally adopted in 1927 and subsequently amended, provided initially for a reduction of 20 percent (in 1957, 30 percent) in the Maritime and Quebec portion of westbound rates and of 20 percent in rates on traffic moving within the designated "select area" of the Maritime Provinces and Quebec.

56. During the intervening years, highway construction and the development of haulage by motor truck, coupled with the deepening of the Welland Canal and the rebuilding of the locks, presented the railways with new competition, not only in the low rated bulk freight of the water carriers, but more severely in the high rated light freight easily captured by the trucks. Central Canada and British Columbia have had the benefit of low freight rates by reason of their location or by reason of the development, at Government expense, of alternative forms of competitive transportation. Toll free canals and American railway competition have tended to reduce freight rates in Central Canada while the opening of the Panama Canal and the competition of United States rail carriers have served to reduce transcontinental railway rates to the Pacific Coast.
57. The desire to equalize or to create parity between the various regions of Canada was again dealt with by the Royal Commission on Transportation of 1949 which recommended that class and commodity rates in Canada be equalized between the various regions. In addition, this Commission introduced a new element in the freight rate structure, that of the payment by the Federal Government of a subsidy of approximately \$ 7, 000, 000 a year to the two railway systems as compensation for the cost of maintenance of their lines across the so-called "traffic desert"

north of Lake Superior. The Commission recommended:

" That the cost of maintaining that portion of our transcontinental railway system which serves as a link or bridge between East and West be charged upon the general revenues of the country. This arrangement would reduce the expense of the railways by relieving them of a liability for which at present they have to recoup themselves by means of relatively high freight charges on the through traffic passing over this bridge between the two areas."(31)

58. Dr. Morton commented on the East-West Bridge subsidy as follows:

" Here is to be found another element of a national policy pointing to the ideal of sectional parity, as compensation to the railways for the lack of revenue north of Superior was in fact compensation also for any lowering of rates in the relatively non-competitive Prairie section."(32)

59. Since the end of the Second World War, there has been a vast expansion in highways and an extremely rapid growth of motor transport as a competitive factor, particularly in Central Canada. The increasing competition of motor carries has made it more and more difficult for the railways to serve the national policies for which they were designed and at the same time operate at a profit. This development has tended to put ever increasing pressure on the national policy of inter-regional equalization of costs and benefits.

60. Since 1951, the conditions and regulations under which Canada's railways have operated have been governed by the two factors of ever increasing competition from water and truck carriers and by price and wage inflation. The increase in railway operating costs has been met by the Board of Transport Commissioners by grants of horizontal percentage increases in freight rates. These horizontal increases have operated to increase the sectional disparity in rates which national policy since 1897 has sought to diminish. Thus the definite, if imperfectly realized national policy, of reducing sectional disparity has been abandoned, in effect, for the practice of granting increases which augment this disparity to the jeopardy of the national economy.

Federal Assistance For Highway Construction

61. The Dominion Government has shown a continuous interest in highway

construction since Confederation. The two most recent and outstanding instances of federal participation in this field are assistance granted to the provinces under the Trans-Canada Highway Act of 1949, and, as noted below, under the "Roads to Resources" programme. Under the Trans-Canada Highway Act, the Federal Government, in the ordinary course, contributes 50% of the cost of construction of approved mileage of the east-west trans-continental Trans-Canada Highway, and contributes up to 90% where construction is particularly costly. The magnitude of these two programmes of assistance to the provinces is indicated by the fact that federal expenditure on roads rose from \$10 million in 1949 (3% of total expenditure on roads and streets by federal, provincial and municipal governments) to \$ 136 million in 1960 (12% of total expenditure).

Federal Assistance For Pipeline Construction

62. Assistance by the Federal Government to private enterprise in the provision of transportation facilities in the furtherance of national policy can be further illustrated by reference to the construction of the section of the Trans-Canada pipeline across northern Ontario in 1958. The capital required was provided jointly by the Government of Ontario and by the Dominion Government. The line was constructed by Northern Ontario Pipeline Corporation, a federal crown corporation, and on completion was leased to Trans-Canada Pipelines Limited on terms which were to make early purchase by the Company fairly certain. In the words of the Minister of Trade and Commerce at the time:

" The requirement that Canadian markets so far as possible be first provided for is a requirement of national policy. If any disability were placed upon the development of the gas industry by this national policy, it would be proper that this disability be if possible, counterbalanced . . . Private enterprise alone faced serious difficulties in financing a pipe line stretching across the sparsely-populated areas

of northern Ontario, a line from which relatively low return on investment must be expected during the period of building up the central Canadian market. Some kind and degree of public intervention appeared necessary and proper." (33)

Transportation Policy and Northern Development

63. The most recent instance of national policy for the economic development of the various regions of Canada is the policy of the present Federal Government for development of the natural and human resources of Northern Canada. It is the policy of the administration to foster and facilitate the development and growth of our northern regions, a vast physical and economic frontier whose development is of importance to the nation. The North is expected to provide the same impetus to national economic growth and expansion as did Western Canada in the country's earlier history.

" What was true of the opening of the West is even more true of the opening of the North today. National policy and government action were essential to develop the West. Today, the character of the North and the changing attitudes of people make the role of government still more important." (34)

National policy for development of the North is therefore a re-affirmation of national policy as it has been applied since Confederation to the provision of transportation facilities - largely through government assistance and initiative.

64. The Federal Government's program for the accelerated development of the northern Territories under its jurisdiction is an integral part of its overall policies for national development which are designed to facilitate and encourage the efficient use of Canada's resources. In co-operation with the Federal Government, a number of the provinces, including Manitoba, have instituted similar programs for the development of the northern regions of the provinces. The outstanding example of federal-provincial co-operation in northern development is the joint federal-provincial "Roads to Resources" programme for the provision of highway transportation facilities. Under this program, the Federal Government, by agreement with all the Provinces,

shares the cost of construction of roads to develop new areas with high resource potential.

65. Under this policy \$75,000,000 is being expended to assist the provinces in building 4,210 miles of development roads to link the settled parts of Canada with the North and to provide access routes to rich resource areas. In the Northwest Territories and Yukon Territory, the Federal Government is building approximately 2,000 miles of similar development roads at a cost of \$71,000,000.
66. Pursuant to national policy, federal assistance is provided to the other agencies of transportation - rail, water and air - in Northern Canada. In rail transportation in the northern regions of the provinces, the Government in recent years has provided a subsidy of \$25,000 per mile for construction of a 50 mile section of the provincially-owned Pacific Great Eastern Railway northward to Prince George in British Columbia, and a similar subsidy to the Canadian National Railways for construction of a portion of the branch line from Beattyville to Chibougamau and from St. Felicien to Chibougamau in Northern Quebec. In the Speech from the Throne which opened the current session of Parliament on November 17, 1960, the Government announced plans for two new "projects of railway development in opening up Canada's frontier". Parliament will be asked to authorize work on a new Canadian National Railways line to the new Mattagami Lake base metal mining area in Northwestern Quebec. Parliament will be asked also to approve a detailed survey of the proposed western route for a 400 mile railway from Grimshaw, on the Northern Alberta Railways to the rich zinc-lead deposits at Pine Point on the south shore of the Great Slave Lake in the Northwest Territories.
67. The Federal Government, through Northern Transportation Company Limited, a Crown Corporation, provides a common carrier water transportation service in the Mackenzie River watershed for the movement

of commodities in Northern Alberta and in the Mackenzie District of the Northwest Territories. The Department of Transport provides an annual "sea lift" in the Arctic Ocean for the supply of northern communities and defence bases. In addition, the Department of Transport services shipping through Hudson Straits and Hudson Bay to the Port of Churchill by provision of lights, beacons, radio and direction finding stations, modern charts, icebreaker patrol ships and aerial ice reconnaissance.

68. Under its policy of assisting in the provision of airports and landing facilities, the Federal Government has been meeting the cost or part of the cost of providing such facilities in order to further northern development. The two main types of airports which qualify for such assistance are:

- (a) Development airports, the establishment of which are of major importance in the exploitation of natural resources, or which are of limited or local benefit. In the first instance, the Federal Government meets the entire cost with local interests providing the site, and in the second it assists on a 50-50 basis, to a maximum of \$ 100,000.
- (b) Remote airports, essential to the maintenance of administrative or health services in isolated communities. In such instances local interests must provide the land and undertake the maintenance, and the Federal Government meets construction costs up to a maximum of \$ 50,000.

69. The role assumed by the Federal Government in the provision of transportation facilities and services in the North has been summarized as follows by the Hon. Alvin Hamilton, Minister of Northern Affairs and National Resources:

" Of the basic services, transportation is by far the most important. With distances as vast as in Canada, if the means of transportation were to be provided by private enterprise, only when and where they would be a paying proposition, we would have precious little development. We have accepted the view that the government must participate, totally in the case of public roads and airfields, and partially in the case of railways . . . The present government takes the view that they (transportation facilities) should precede - that they should be put into new and promising regions

to open them up for the development we expect to follow . . . Today there is a new appreciation that government must lead with the provision of transportation services if development is to occur in the vast new areas of the North."(35)

Conclusion

70. The evolution of national economic policy since Confederation, particularly in relation to the provision of transportation facilities, can be said to lay emphasis on two objectives. Firstly, the achievement of rapid economic expansion. Secondly, the equalization of the benefits of such expansion in all regions of Canada.

" To depart further from, indeed, not to return to the ideal of a national railway policy of furnishing rail transport at minimum differential rates throughout the various regions of Canada would, in the light of history, be to undo the work of a century of nation building and make the position of Manitoba and the West in Confederation one of hardship and discrimination."(36)

PART TWO

INEQUITIES IN THE FREIGHT RATE STRUCTURE

" There is no better evidence of the disturbed feeling in the country caused by the nature of the present freight rate structure than the fact that the seven provincial governments have united to complain of it; while on the other hand the two central provinces raised no protest whatever. There is no such thing as a freight rate grievance in Central Canada to arouse the people of that area as the people of the West and the Maritimes have been aroused."(37)

Term (a) of the Commission's specific terms of reference states that the Commission shall consider and report upon:

" (a) Inequities in the freight rate structure, their incidence upon the various regions of Canada and the legislative and other changes that can and should be made, in furtherance of national economic policy, to remove or alleviate such inequities".

71. The Province of Manitoba has dealt in our submissions both in Winnipeg and in Ottawa with certain specific inequities; namely, horizontal percentage rate increases, lake and rail rates, inequities under the long and short haul clause, inter-line rates.

CHAPTER II

HORIZONTAL PERCENTAGE RATE INCREASES

Problem Defined

72. There is no single subject presently before this Commission that has caused greater anxiety and aggravation of shippers in particular regions than the present practice of the Board of Transport Commissioners in awarding freight rate increases by means of the horizontal percentage method.
73. The problem is not a new one. This practice has received comment from Royal Commissions on Transportation since 1926. In that year, the report of the Duncan Commission was received and under the heading

of " Incidence of 'Horizontal' War Increases" the following appears:

" There is one further very important feature of the railway situation, as it effects the Maritimes, which calls for special mention. In one sense it is connected with the problems that we have been discussing, but its immediate incidence is not so interconnected with the general problem as to make it impossible to deal with it separately. Indeed the reaction of the burden which it imposes is so great that, in our view, it should be dealt with as a special problem. We refer to the system under which, during the late war flat percentage increases (known as "horizontal increases") were added to railway rates."

" The railway administration, in giving evidence before us, agreed that long-distance traffic, particularly heavy traffic, had been seriously prejudiced by the operation of the horizontal increases ... The Railway Board, we were informed by the railway administration, felt themselves prevented from working out the proposition in that way, since when the advances were made they were made horizontally, and some declaration had been made at the time that when reductions came they also would be made horizontally.

In view of the importance of railway rates to long-distance and heavy traffic, we have no hesitation in recommending that the matter should be taken into fresh consideration by the Railway Commission, that they should be relieved from the necessity of regarding themselves as bound by any such declaration as is referred to, but should be free to consider the whole question on its merits."(38)

74. In the report of the Turgeon Royal Commission in 1951, the matter of horizontal increases was dealt with at length. The findings of that Commission appear on pages 45 - 47 and at pages 51 - 62 of the report. At page 51 the complaints of the eight provinces were summarized as follows:

" That the application of rate increases by the horizontal increase method:

1. Disturbs existing "relationships";
2. Accentuates existing disparities;
3. Aggravates the disadvantage already suffered by long haul shippers;
4. Destroys existing "differentials";
5. Assumes that all traffic can bear the same percentage increase when this is not the case; and
6. Worsens the competitive position of manufacturers

subject to long haul, especially when they have to bring materials in for fabrication."

75. The Turgeon Commission's principal conclusions and recommendations on the problems are found at pages 61 - 62 of the report where they state:

" Conclusions

1. Applications for uniform horizontal increases to all freight tolls assume that all freight can, under all conditions, bear an equal burden of increase. This is an incorrect assumption.
2. Horizontal increases, although preserving rate relationships percentagewise, disturb them in cents per 100 pounds (or other unit) in so far as shippers and consignees are concerned, and this is of much importance to them.
3. Horizontal increases aggravate the disadvantage already suffered by long haul shippers and consignees."

The recommendations of that Commission were as follows:

" No legislative amendment dealing with horizontal increases is recommended. The Railway Act in its present form gives to the Board ample power to deal with matters of this kind.

In all future increase cases it is to be hoped that the Board and the Railways will pay due regard to the considerations referred to in this section."

76The general approach and desire of the Turgeon Commission is best illustrated by reference to the report of that Commission where in dealing with this problem (at page 47), the Commission states:

" It appears therefore that the answer to the question raised lies mainly with the railways themselves, since the means of removing the cause of dissatisfaction is within their own initiative. It has been pointed out to the Commission that in this regard railway management in the past has often proceeded, in fixing freight rates, without sufficiently considering the interest of the community to be served, and without even showing a proper conception of the long-run interest of the railway."

These were the conditions and the situation at the time of the report of the Turgeon Royal Commission in 1951.

Developments Since Turgeon Commission

77. What has transpired since that date was indicated in the evidence of the Honourable Duff Roblin, Premier of Manitoba at the Commission's regional hearings in Winnipeg.

" Q. Mr. Premier, from your knowledge, were the recommendations the Turgeon Commission re horizontal increases implemented?

A. I am afraid not. In the light of such unambiguous recommendations by the Turgeon Commission the Provinces might properly have expected some relief from this serious burden, but in the rate cases immediately following publication of the report, the Board of Transport Commissioners continued to follow their past policies in this regard. The continued concern of the provinces was voiced in their appeal to the Governor in Council in 1953 :

On July 4, 1951, in its first judgment following the publication of the Royal Commission Report, the Board postponed implementation of the recommendations of the Royal Commission in this regard. In its next Judgment, dated January 25, 1952, the Board disposed of the matters by suggesting that shippers should place their grievances first before the railways concerned and later if they think fit, make an application to the Board. The Board, while adopting the views of the Royal Commission at page 62 of its Report with regard to the sudden shock to the economy caused by large horizontal increases, contented itself with saying that the increases imposed by the judgment were small ... (Submissions to His Excellency the Governor General in Council in re Freight Rates - 7% Case by the Petitioner, Ottawa, May 1, 1953, p. 28 . . .

Since 1950 there have been 7 applications for general rate increases - all but one by way of horizontal percentage increases - resulting in a total increase of 77%."(39)

78. That the inequity created by horizontal increases continued to exist is clear from the statement of the Acting Prime Minister made on November 26, 1958 prior to the establishment of this Commission. It is further corroborated by the statement of the Minister of Transport at the time that Bill C-38, which was legislation intended to roll back the most recent horizontal freight rate increase of 17%, was presented to

79. The Acting Prime Minister stated:

" It is, however, recognized by the government that there are serious inequities in the present freight rate structure which have both contributed to, and been aggravated by, the system of horizontal rate increases."

80. The Honourable George Hees on March 24, 1959 stated:

" The government has decided that the most effective relief is to be afforded by confining the subsidy to a reduction in the non-competitive class and commodity rates ... These rates ... are the ones which have taken the full percentage increases authorized by the Board over many years.

This manner of alleviation concentrates the benefits on the long haul traffic where rates have not been kept down by competition ...

As honourable members know, the government has indicated its intention of proceeding with a comprehensive enquiry into these matters affecting the railways." ... (40)

Railway Position

81. In disregard of the statements of the railways themselves before the Duncan Commission and the clear directive of that Commission; in disregard of the findings of the Turgeon Commission in 1951 and its directive to the railways to correct this very serious abuse; in disregard of the clear and unambiguous statements of the Acting Prime Minister and the Minister of Transport, we find the Canadian Pacific Railway on September 17 and 18, 1959 stating as follows:

82. At page 100 of the transcript:

" Commissioner MacPherson; And we have many other inequities, or alleged inequities, such as the horizontal increase, that we have heard of? That has been discussed?

Mr. Sinclair: That is an alleged inequity.

Commissioner MacPherson: Yes, but it is one that is of importance to some parts of the country?

Mr. Sinclair: They have said it was.

Commissioner MacPherson: And yet you would not think it is important? The important

thing that I want to refer to is the fact that you emphasized only the statutory rates yesterday, and again this morning.

Mr. Sinclair: Yes, sir.

Commissioner MacPherson: But this Commission must deal with all inequities, and possibly the greatest inequity of all is that freight carries the load for the whole rail enterprise?

Mr. Sinclair: Well, with respect, sir, I can answer Yes to the questions in which you have outlined the history of them, but I would not agree that horizontal increases result in inequities."

83. It is this spirit that has governed the attitude and the participation of the Canadian Pacific Railway throughout the conduct of these very lengthy hearings dealing with this matter of inequities in the Canadian freight rate structure.

Parties Supporting Manitoba's Position

84. While the Canadian Pacific Railway " would not agree that horizontal increases result in inequities", we submit that this Commission has heard an abundance of evidence from one end of the country to the other as to the very real grievances of the citizens of Canada regarding this method of permitting freight rate increases. We wish to refer to some of the evidence presented to the Commission on this matter.

85. At page 205, Volume 2 of the Daily Transcript, Mr. Awada, appearing on behalf of the Canadian Granite Industries stated:

" Q. It is quite clear that you object to increased freight rates by horizontal percentages.

A. Yes, especially where we are dealing with products which are comparatively low in value.

Q. Have you any alternative to suggest to the Board?

A. I would suggest that the Board of Transport Commissioners, perhaps, impose a maximum in cents per 100 lbs. for products which are extremely heavy and comparatively low in value, that may be one solution to this perplexing problem."

86. At page 216, Volume 3 of the Daily Transcript in the presentation of the Honourable Hugh John Flemming, Premier of New Brunswick, the following

appears:

" In addition the competitive position of secondary manufacturing in the Atlantic Provinces as contrasted with that of the Central Provinces has deteriorated. This has been due primarily to two factors: (1) the frequency and total amount of horizontal percentage increases in railway freight rates which have been a feature of the whole post war period."

87. Again at page 225:

" The second factor which has tended to destroy this transportation assistance to the Maritime provinces has been the series of post war freight rate percentage increases authorized by the Board of Transport Commissioners for Canada. These permitted an upward revision in rates of 141.9% of the 1948 levels.

The method by which the railways were permitted to increase their rates and the manner in which the increases were applied is a matter of grave concern to the economy of the Atlantic Region. The so-called horizontal increases affect the long distance shipper to a greater degree in dollars than the one who has only a short haul to his market. The difference in dollars may be sufficient either to eliminate or aggravate detrimentally the competitive position established by New Brunswick manufacturers in the Central Canadian markets."

88. At page 239 the Premier continues:

" Horizontal freight rate increases accentuate the difficulty of Maritime industries to have access to the Central Canadian market and transportation costs approximating those of competing industries in that market. They also make it impossible to hold transportation costs on goods inbound to the Maritimes at a level proportionate to that in Central Canada."

89. At page 240:

" It is obvious that any horizontal freight rate increase, an overall rise of a certain percentage, will affect the long distance shipper to a greater degree than the one who has only a short haul to his market. This process has, in fact, been in operation and has seriously affected the ability of the New Brunswick shipper to compete in the large consuming areas of Central Canada. It has been an important factor in destroying the intent of the Maritime Freight Rates Act. It has also been a factor helping to curtail the economic development of the whole Atlantic Region."

90. At page 290 of volume 3, Mr. Fisher, representing Enterprise Foundry Limited, is quoted as follows:

" It seems, that due to the way in which freight rates have been increased since 1948, that is on a horizontal percentage basis, that the effect has been the reverse of the original idea of unity, namely, it seems to have resulted in a tearing apart of Canada and a great centralization of industry in Ontario and Quebec to the detriment of other provinces. We believe, that this condition can only be overcome by removing the uneconomic and what appears unjust situation which now exists and which throughout the last many years has steadily worsened the situation of the producers in the Atlantic provinces."

91. At page 522, Volume 5, The Honourable Mr. Shaw, Premier of Prince Edward Island stated:

" Now, since that time, we have been contending with these problems of transportation and express rates, and we have endeavoured, on a number of occasions, to secure better terms on freight rates and to offset, if possible, the tendency to apply horizontal increases that seriously affect the economy of the province."

92. At page 524:

" One of our difficulties, of course, is that our markets are far distant - Toronto and Montreal and the southern United States for seed potatoes, and so on - and so any increase in freight rates - horizontal increases particularly - have a devastating effect upon the receipts and revenue that come into the pockets of our farmers and our fishermen."

93. At page 532, Mr. Campbell, Counsel for the Province of Prince Edward Island is quoted as follows:

" Now, Mr. Chairman, I don't propose to weary the Board at this moment with the whole text - the whole text if we could call it text - the whole submission of this province may be summed up in these words which were expressed by my friend the Premier a few moments ago, that some alternative must be found to horizontal rate increases."

94. At page 575, Mr. Dewar on behalf of the Prince Edward Island Federation of Agriculture:

" Now, so far as horizontal freight rate increases in their application is concerned, I would submit, gentlemen, that these bear with particular effect, and with particular hardship, on the agriculture industry. To begin with, most of our agriculture products are heavy and bulky in relationship to their value. Then, in addition to that, the average haul of agricultural products and supplies used in agriculture is very, very much longer than the average haul for most other commodities."

95. The submission of the Province of Nova Scotia made reference to the

findings of the Turgeon Commission and Counsel for the Province of Nova Scotia at page 657, Volume 6, states:

" Although representations on behalf of the province have been made to the Board in this regard on subsequent general freight rate increases applications made by the railway companies, no effective measures have been adopted to alleviate the detrimental effects of the horizontal percentage increases which have been successively authorized by the Board."

96. The submission of the Province of Newfoundland appears at page 941, Volume 8:

" However, subsequent to 1951, and the implementation of the ruling of the Board of Transport Commissioners, successive increases in freight rates generally have been authorized by the Board of Transport Commissioners on a horizontal basis. These increases have, of course, been made effective in Newfoundland and they have produced as a result an up-surge in landed cost of goods into this Province.

Because of Newfoundland's geographical insularity, and the long-haul mileage involved in the movement of traffic from the Lake area and Montreal to Newfoundland points, the horizontal increases in freight rates have borne most heavily upon the Province. The increases in freight rate charges have reflected themselves in the cost of living as is shown by the survey to which references have already been made.

Since horizontal increases in freight cost bear so heavily upon the people of Newfoundland, it is suggested that other methods of meeting the repeated demands of the railways for increased freight rates be evolved --- unless some alternative method is used for increasing revenue to the railways, the consequences to the people of this Province of continued railway freight rate increases will be serious and almost catastrophic."

97. In the submission of the Province of Ontario appearing at page 7091, Volume 42:

" For instance, in Northwestern Ontario, the railway rates, aggravated by horizontal increases, can be a serious impediment to the development of its resources, the export of mineral products and also to establish trade channels and markets in that part of the province. --- In southwestern Ontario there is also a feeling of discrimination."

98. The submission of the Southwestern Ontario Associated Chambers of Commerce at page 7279 Volume 43:

" The freight rate picture involving South-western Ontario has been steadily working more of a hardship with each horizontal percentage railway freight rate increase approved by the Board of Transport Commissioners.

Horizontal percentage increases change rate relations in cents per 100 lbs. and this generally disturbs business. There is a shrinkage of markets to industry, for long hauls are subjected to the largest increase, while short hauls gain by the advantage of a lower increase."

99. Premier Manning speaking on behalf of the Province of Alberta stated at page 5667 of Volume 36:

" After nine years the Transport Board is still granting permissive authorizations for rate increases upon the horizontal percentage basis so severely condemned in the Royal Commission's Report (Turgeon) I have just quoted."

100. At page 5668:

" Until the several distortions and discriminations are removed from the rate structure can be evolved, all parts of which will bear equally the burdens of operating our railways, then the announced policy of the Federal Government that there are to be no increases should be continued."

101. The position of the Province of British Columbia appears at page 6922 of Volume 41:

" So much has already been said about horizontal percentage increases in every rate case and before Royal Commissions, yet nothing has been done about them either by the railways or the Board of Transport Commissioners in spite of the conclusion and recommendations of the Turgeon Commission."

102. Reference is made to these recommendations and the submission continues at page 6923:

" As a method of recovering increased railway expenses, horizontal percentage increases are without question outmoded in the light of the generally competitive situation. They are also inefficient and unjust. They inevitably lead to protracted rate cases and appeals; the final results satisfying neither the railways, the shippers nor the provinces."

103. At page 6925:

" Horizontal percentage increases discriminate against regions which are obliged through physical location and circumstances

imposed by national policies to ship and receive goods over great distances. Instead of making for national economic unity such increases, by discriminating against long haul traffic, tend to disintegrate the economy into local high cost producing regions."

104. We have confined our references to the major submissions, particularly those made on behalf of the provincial governments. There were numerous other submissions by large trade organizations and by specific shippers in the various regions. All of these submissions substantiate our contention that horizontal increases, rather than being ameliorated have, in fact, increased in intensity and have further aggravated existing inequities. In short, the situation which the Turgeon Commission in 1949 found to be inequitable and harmful to the economic well being of the nation has since that date become intolerable and has tended to frustrate national economic policy. The past ten years have clearly illustrated that no relief in this respect can be expected from either the railways or the Board of Transport Commissioners and that some safeguards must be instituted either by way of statutory limitations or legislative direction if the present situation is to be altered.

Impact on rate structure

105. Before proceeding with a detailed consideration of Manitoba's proposed solution, we would like to add to the comments above referred to, certain statistics which, we submit, point up the impact of the present method of permitting continued percentage increases in the freight rate structure. These are the rates which were submitted as Schedule "A", in the submission of Premier Roblin made on February 8, 1960 entitled, "Comparative Rates for East-West and East-East Movements, 1949 and 1958"

SCHEDULE "A"

| <u>Commodity</u> | <u>Date</u> | <u>EAST-WEST</u> | | <u>EAST-EAST</u> | |
|-------------------------|-------------|-------------------------------------|--|-------------------------------------|--|
| | | <u>Rate</u> <u>per ton</u> \$ | <u>Average</u> <u>Haul</u> Miles | <u>Rate</u> <u>per ton</u> \$ | <u>Average</u> <u>Haul</u> Miles |
| Agricultural Implements | 1949 | 30.08 | 1620 | 9.33 | 297 |
| | 1958 | 62.65 | 1735 | 16.43 | 295 |
| | Increase | 32.57 | | 7.10 | |
| Auto, Parts | 1949 | 40.79 | 1754 | 10.44 | 357 |
| | 1958 | 87.49 | 2038 | 11.44 | 228 |
| | Increase | 46.70 | | 1.00 | |
| Wooden Containers | 1949 | 27.58 | 1208 | 7.18 | 298 |
| | 1958 | 51.80 | 1354 | 16.50 | 396 |
| | Increase | 24.22 | | 9.32 | |
| Soap | 1949 | 35.37 | 1504 | 8.50 | 362 |
| | 1958 | 50.83 | 1949 | 8.94 | 359 |
| | Increase | 15.46 | | .44 | |
| Explosives | 1949 | 53.37 | 1220 | 20.64 | 294 |
| | 1958 | 79.59 | 1603 | 24.25 | 278 |
| | Increase | 26.22 | | 3.61 | |
| Candy | 1949 | 39.33 | 1493 | 14.25 | 430 |
| | 1958 | 57.16 | 2119 | 8.95 | 366 |
| | Increase | 18.43 | | 5.30 | |
| Cigarettes & Cigars | 1949 | 68.44 | 2400 | 12.42 | 373 |
| | 1958 | 69.09 | 1431 | 12.37 | 363 |
| | Increase | .65 | | .05 | |
| Mixed Cars | 1949 | 30.47 | 1315 | 11.18 | 334 |
| | 1958 | 74.84 | 1628 | 12.59 | 337 |
| | Increase | 44.37 | | 1.41 | |

These rates are based on data published in the "Waybill Analysis" issued by the Board of Transport Commissioners.

These figures illustrate the dollar per ton distortion since the findings of the Turgeon Commission in 1949. They appear at page 4212 of Volume 29.

106. We would also direct your attention to Schedule "D" in the submission of the Province of Manitoba appearing at page 4230 of Volume 29 which schedule is entitled, "The Comparison of Average Freight Rate Per Ton on Traffic To or From Manitoba Points with Average Freight Rate Per Ton on the Same Commodity Moving Elsewhere in Canada and the United States."

| <u>Commodity</u> | | <u>Man.</u> | <u>Can.</u> | <u>U.S.A.</u> |
|------------------|------------------------------------|-------------|-------------|---------------|
| 1 | Wheat | 3.74 | 4.47 | 6.13 |
| 7 | Oats | 3.22 | 5.20 | 6.24 |
| 9 & 10 | Barley and Rye | 3.33 | 4.52 | 6.87 |
| 21 | Cereal Food Preparations | 34.61 | 18.08 | 11.46 |
| 25 | Hay | 8.96 | 8.75 | 12.46 |
| 49 | Apples | 38.29 | 30.30 | 32.75 |
| 101 | Sugar Beets | 1.63 | 1.52 | 1.29 |
| 105 | Flax Seed | 3.35 | 5.08 | 7.88 |
| | Miscellaneous Agriculture Products | 14.93 | | |
| | Total Agriculture Products | 4.15 | 5.27 | 8.41 |
| 203 | Cattle | 18.85 | 24.67 | 19.14 |
| 211 | Swine | 19.56 | 17.69 | 21.32 |
| 215 | Meat | 50.55 | 51.09 | 34.53 |
| 221 | Margarine | 33.40 | 37.75 | 26.71 |
| 225 | Poultry | 28.08 | 26.84 | 32.97 |
| | Miscellaneous Animal Products | 24.95 | | |
| | Total Animal Products | 24.90 | 28.23 | 22.28 |
| 305 | Bituminous Coal | 3.98 | 3.18 | 3.45 |
| 314 | Copper - Nickel Ore & Conc. | 12.74 | 1.34 | - |
| 327 | Gravel and Sand | .73 | 1.06 | 1.29 |
| 329 | Stone and Rock | 2.41 | 1.73 | 1.57 |
| 339 | Asphalt | 7.30 | 8.41 | 8.43 |
| 341 | Salt | 7.55 | 6.29 | 6.37 |
| 348 | Gypsum | 3.58 | 1.27 | - |
| | Miscellaneous Mine Products | 9.96 | | |
| | Total Mine Products | 3.70 | 2.31 | 2.98 |
| 409 | Pulpwood | 22.09 | 3.26 | 1.95 |
| | | 31.95 | 13.29 | 16.89 |
| 415 | Veneer, Plywood | 31.95 | 27.17 | 20.28 |
| | Miscellaneous Forest Products | 12.62 | | |
| | Total Forest Products | 13.28 | 8.48 | 7.51 |
| 501 | Gasoline | 6.45 | 5.65 | 4.40 |
| 503 | Fuel Oil | 8.04 | 5.74 | 5.27 |
| 539 | Fertilizers | 17.96 | 6.51 | 7.62 |
| 559 | Copper Ingot | 26.73 | 14.26 | 16.58 |
| 577 | Iron & Steel-Bar, Rod | 2.02 | 13.16 | 4.34 |
| 583 | Manufactured Iron & Steel | 14.02 | 13.88 | 9.29 |
| 587 | Iron & Steel Pipe & Fittings | 41.38 | 21.70 | 15.36 |
| 591 | Agriculture Implements | 50.53 | 50.34 | 29.65 |
| 595 | Machinery | 36.22 | 25.78 | 31.63 |
| 613 | Automobiles | 69.08 | 81.08 | 51.78 |
| 615 | Trucks | 66.88 | 65.02 | 56.82 |
| 633 | Cement | 9.73 | 5.88 | 4.14 |
| 639 | Brick and Building Tile | 7.13 | 6.76 | 6.37 |
| 645 | Lime | 8.61 | 6.07 | 5.73 |
| 657 | Newsprint Paper | 25.61 | 9.99 | 10.33 |
| 661 | Wrapping Paper | 14.75 | 14.23 | 15.53 |
| 663 | Paper Bags | 9.21 | 14.41 | 16.89 |
| 665 | Paper & Paper Articles | 28.74 | 27.65 | 19.66 |

| <u>Commodity</u> | <u>Man.</u> | <u>Can.</u> | <u>U.S.A.</u> |
|--|-------------|-------------|---------------|
| 669 Paperboard, Fibreboard | 28.59 | 15.38 | 13.13 |
| 671 Wallboard | 15.59 | 15.49 | 10.64 |
| 675 Insulating Materials | 52.00 | 33.08 | 20.88 |
| 713 Floor Covering | 45.72 | 30.39 | 33.84 |
| 715 Furniture | 42.27 | 67.37 | 41.83 |
| 735 Rope, Cordage, Twine | 25.57 | 25.75 | 23.00 |
| 749 Liquors - Malt | 13.27 | 8.55 | 11.76 |
| 763 Food Products | 26.69 | 21.37 | 17.06 |
| 769 Soap | 36.93 | 32.06 | 18.49 |
| 773 Feed, Animal | 13.90 | 7.50 | 5.05 |
| 777 Cigarettes | 26.01 | 31.54 | 39.11 |
| 789 Scrap Iron & Steel | 6.32 | 4.87 | 3.97 |
| 799 Manufactures & Miscellaneous | 37.55 | 23.70 | 16.35 |
| Miscellaneous Products of Manufacture | 24.47 | | |
| Total Manufactures and Miscellaneous | 18.18 | 12.68 | 10.50 |
| Grand Total | \$ 8.32 | 6.67 | 6.40 |

107. This schedule indicates that the average Manitoba shipper pays \$ 8.32 per ton as opposed to a Canadian average of \$ 6.67 per ton and a U.S. average of \$ 6.40 per ton. This present distortion between the individual Manitoba shipper and the average Canadian shipper is further aggravated by the method of permitting horizontal percentage increases.
108. We refer to the testimony of Mr. J. Roberts, General Traffic Manager, Canadian Pacific Railway, touching upon this matter of regional burden. Beginning at page 17845, Volume 107, Counsel for Manitoba discussed Exhibit 162 which was allegedly a compilation of the receipts of the C.P.R. from the most recent rate increase of 17% in 1958. Counsel pointed out at page 17845 that traffic terminating in the Western region contributed 52.8% of the additional rail revenue while representing only 25% of the total tonnage within Canada, including grain moving at statutory rates unloaded at Vancouver and Churchill.
109. We discussed with Mr. Roberts the regional impact of the increase in cents per 100 pounds. The following table is a summary of the figures discussed.

| <u>Normal Rates</u> | <u>Rate per 100 lbs. prior to increase.</u> | <u>Percentage increase</u> | <u>Increase in cents per 100 lbs.</u> |
|----------------------|---|--------------------------------|---|
| Maritime to Maritime | 14 cents | 10.7% | 1.6 cents |
| Maritimes to O.Q. | 45 cents | 15.3% | 6.9 cents |
| Maritimes to Western | 300 cents | 17.0% | 51.0 cents |
| O.Q. to O.Q. | 17 cents | 14.5% | 2.5 cents |
| O.Q. to Maritimes | 84 cents | 17.0% | 14.3 cents |
| O.Q. to Western | 261 cents | 16.4% | 42.8 cents |
| Western to Western | 28 cents | 15.0% | 4.2 cents |
| Western to O.Q. | 163 cents | 16.8% | 27.4 cents |

Competitive Rates

| | | | |
|----------------------|-----------|-----------------|------------|
| Maritime to Maritime | 17 cents | 5.5% | .9 cents |
| Maritimes to O.Q. | 61 cents | 7.9% | 4.8 cents |
| Maritimes to Western | --- | No Record ----- | |
| O.Q. to O.Q. | 25 cents | 12.6% | 3.2 cents |
| O.Q. to Maritimes | 108 cents | 4.4% | 4.8 cents |
| O.Q. to Western | 388 cents | 7.0% | 27.2 cents |
| Western to Western | 43 cents | 12.3% | 5.3 cents |
| Western to O.Q. | 197 cents | .4% | .8 cents |
| Western to Maritimes | 238 cents | .6% | 1.4 cents |

110. The inequity of horizontal increases was pointed out by emphasizing the increases in rates per 100 lbs. on normal traffic as follows: within the Maritimes 1.6 cents; Maritimes to Ontario and Quebec, 7 cents; Maritimes to West, 51 cents; and Ontario and Quebec to West 42.8 cents. While in percentage of increase the differences may appear insignificant and equitable, the resultant changes in cents per 100 lbs. are indeed significant and clearly inequitable in application.

Solutions

111. We have now considered the nature of the problem as set out by various governments and shippers who appeared before this Commission representing

areas from coast to coast. We have also set out the specific nature of the problem as it applies to the citizens of the Province of Manitoba. We now turn our attention to possible solutions to this problem. As stated by Premier Roblin:

There have been numerous alternative methods suggested from time to time in both Canada and the United States with a view to easing the obvious impact of horizontal percentage increases. Various devices are presently utilized by the Inter-State Commerce Commission in the United States (41) and on occasion the Board of Transport Commissioners has applied maximums and exceptions on specific commodity movements when applying rate increases. There are certain inherent weaknesses in any alternative plan that attempts to shift rate burdens but it is our submission that an alternative is feasible, which would more equitably distribute the increases required while recognizing the characteristics of particular traffic movements."⁽⁴²⁾

112. Our problem in Canada is to establish a rate basis which minimizes the dollar increase on the long haul traffic, while at the same time maximizing the contribution from the short haul traffic. The difficulty lies in finding the point of balance or diminishing returns where the increase results in a greater loss by way of diverted traffic than is realized from the higher rate. It is the submission of the Province of Manitoba that increases applied by way of cents per hundred pounds plus a percentage increase is one possible scheme which is worthy of study as a compromise formula.
113. When the railways find that the revenue contributions from the various segments of traffic produce a total which collectively is insufficient to cover their operating and overhead costs, the practice has been to apply to the Board of Transport Commissioners for permission to increase all rates under the jurisdiction of the Board to yield sufficient additional revenue to meet their requirements. In every case, this increase has been calculated by raising virtually all line haul rates, with the exception of coal and coke, by a specified percentage. This method of increasing revenue has many advantages for the railway traffic manager and the regulatory agency. In the first place, it is a simple matter to calculate. Secondly, it can easily be made effective by the publication of a master tariff rather

than a revision of each of the hundred of thousands of rate items published. Thirdly, because it is a percentage increase, it tends to widen the range between the lower level of rates which might otherwise discriminate against a shipper and the higher level of rates found to be reasonable by the regulatory agency.

114. It seems clear that any lasting solution to this problem of rate increases must be directed to achieving a proper balance between the long haul shipper, the intermediate shipper and the short haul shipper. It is our submission that this can best be done by a proper distribution of the increased terminal costs and the increased line haul costs. The Manitoba formula is an attempt to reflect the proper cost factors that go into making up general rate increases.

Manitoba Formula

115. The Manitoba formula suggests that increased terminal costs should be reflected by a flat cents per hundred pounds levy while increased line haul costs should be reflected by a percentage increase. The material submitted to the Commission concerning this matter and which appears in Volume 91 and Exhibits 153-B, 153-C, 153-D, 153-E, illustrates the application of this formula on the basis of cost data which would allocate one-half of the necessary increase to terminal costs and one-half of the necessary increases to line haul costs. As explained in the submission of the Province, appearing at page 15611 of Volume 91, these Exhibits are based on the assumption that the increased costs experienced by the railways were evenly divided between terminal and line haul costs. If subsequently, the regulatory agency, in this case the Board of Transport Commissioners, determined through improved cost data, that an increase in rates was necessary and that the increased costs were in a different ratio than 50-50, the factors would reflect this difference. If the Board were to ascertain that the necessary increase was brought about by an amount reflecting 60% line haul cost increase and 40% terminal cost increase, then the

resulting rate increase would consist of a percentage increase reflecting the 60% factor of line haul cost increase and a cents per hundred pounds increase reflecting the 40% factor of terminal cost increase. By way of illustration, if in a future rate case, the railways should establish that their additional requirements are thirty million dollars, and that these additional requirements are occasioned by an increase in terminal costs of ten million dollars and of line haul costs of twenty million dollars, the Manitoba proposal would then envisage that the twenty million dollars would be obtained by a percentage increase (line haul costs) and the ten million dollars would be obtained by a flat number of cents per one hundred pounds (terminal costs) depending on the estimated tonnage to be moved.

116. In considering any alternative scheme for the application of rate increases, we must take into consideration the two principal factors involved: firstly, the impact on shippers and secondly, that the resultant scheme does not impair railway revenues. It is the submission of the Province of Manitoba that our proposal would tend to minimize the dollar increase on the long haul or high rated traffic while at the same time maximizing the contribution from the short haul or low rated traffic.
117. In the case of the extremely short haul traffic and similarly in the case of the low grade commodities moving at particularly low rates, tests have indicated that some modification of the Manitoba proposal was necessary in order that no major inequity be introduced as a result of our proposal and that the traffic continue to move freely by rail.
118. The modification which we have introduced into our proposal would alleviate the full impact of the formula on the very short haul or very low rated commodities while at the same time recognizing the fact that costs have gone up to a greater relative degree on these movements than have the costs on long haul traffic. The modification which we suggest consists of assessing a higher percentage increase on this traffic, with the provision that the increase to be applied would be the lower of such

higher percentage or the formula as previously outlined. Reference to Exhibit 153-E will best illustrate the modification in operation.

(Figures expressed in cents per 100 pounds)

| Rates Prior to increase | Amount of increase | | Not applicable due to modification. |
|----------------------------|--------------------|--|--|
| | At 20% | At 10% plus 3.5 cents | |
| | | With Modification Without Modification | |
| (1) | (2) | (3) | |
| 1 | Nil | $\frac{1}{2}$ | $3\frac{1}{2}$ |
| 2 | $\frac{1}{2}$ | $3\frac{3}{4}$ | $3\frac{3}{4}$ |
| 3 | $\frac{1}{2}$ | $1\frac{1}{4}$ | $3\frac{3}{4}$ |
| 4 | $3\frac{3}{4}$ | $1\frac{1}{2}$ | 4 |
| 5 | 1 | 2 | 4 |
| 6 | 1 | $2\frac{1}{2}$ | 4 |
| 7 | $1\frac{1}{2}$ | 3 | 4 |
| 8 | $1\frac{1}{2}$ | 3 | $4\frac{1}{2}$ |
| 9 | 2 | $3\frac{1}{2}$ | $4\frac{1}{2}$ |
| 10 | 2 | 4 | $4\frac{1}{2}$ |
| 11 | 2 | 4 | 5 |
| 12 | 2 | 5 | 5 |
| 13 | 3 | | 5 |
| 14 | 3 | | 5 |
| 15 | 3 | | 5 |
| 20 | 4 | | 6 |
| 25 | 5 | | 6 |
| 30 | 6 | | 7 |
| 35 | 7 | | 7 |
| 40 | 8 | | 8 |
| 45 | 9 | | 8 |
| 50 | 10 | | 9 |
| 100 | 20 | | 14 |
| 150 | 30 | | 19 |
| 200 | 40 | | 24 |
| 250 | 50 | | 29 |
| 300 | 60 | | 34 |
| 350 | 70 | | 39 |
| 400 | 80 | | 44 |
| 450 | 90 | | 49 |
| 500 | 100 | | 54 |
| 600 | 120 | | 64 |
| 700 | 140 | | 74 |
| 800 | 160 | | 84 |
| 900 | 180 | | 94 |
| 1000 | 200 | | 104 |
| 1100 | 220 | | 114 |
| 1200 | 240 | | 124 |
| 1300 | 260 | | 134 |
| 1400 | 280 | | 144 |
| 1500 | 300 | | 154 |

Modification not applicable

119. Exhibit 153-E and the figures reproduced from that exhibit are used to illustrate the actual operation of the formula which includes the modification introduced. As explained by Mr. Stechishin at pages 15624 - 15626 of Volume 91, column 1 contains rates prior to the proposed increase. They represent rates in cents per hundred pounds up to \$15.00 per 100 lbs. prior to an increase. Column 2 is the amount of the increase resulting from a straight horizontal percentage increase of 20% and it shows that a 1¢ rate would not be increased at all because of the disposition of fractions and that a 2¢ rate would go up by one-half a cent as would a 3¢ rate. A four cent rate would go up three quarters of a cent. A 5¢ rate by one cent, and a six cent rate would increase by one cent. As the scale reached \$2.00 per one hundred pounds, under the horizontal percentage method, the rate would increase by forty cents and at the other end of the scale, the \$15.00 per 100 lbs. rate would increase by \$3.00 per 100 lbs.
120. Column 3 introduces the Manitoba Formula subject to the modification suggested. The modification is either a forty percent increase, or the original formula, whichever is lower. Under the modified scale, the 1¢ rate would go up by one-half a cent as compared to the horizontal method where no increase would be applied. A 2¢ rate would go up three-quarters of a cent as opposed to one-half a cent under the horizontal method. A 3¢ rate would go up by one and a quarter cents as compared to a half cent under the horizontal method. At 12¢ the modification produces a 5¢ increase which is the same increase as that produced by the basic Manitoba Formula so that the modification becomes inoperative above the 12¢ level.
121. The effect under the modification is that those rates presently moving at 12¢ per 100 lbs. or lower would be subject to the modification. Rates moving at 13¢ or above would not be affected by the modification. All rates above the 12¢ level would be subject only to the operation of the formula itself. For example, at \$2.00, the Manitoba formula would impose a rate increase of 24¢ per 100 lbs. as compared to 40¢ per 100 lbs. under the

horizontal method. The \$3.00 per 100 lbs. rate would increase by 34¢ under the Manitoba formula as compared to 60¢ under the horizontal percentage method. A rate of \$5.00 per 100 lbs. would increase by 54¢ under the Manitoba formula as compared to \$1.00 under the horizontal method, and the rate of \$15.00 per 100 lbs. would increase by \$ 1.54 as compared to \$3.00 under the present horizontal method.

122. As previously stated, two considerations should be foremost in recommending an alternative to the present method: the interests of the shipper, and the safeguarding of the revenues of the railway. We suggest that the foregoing material substantiates our contention that the Manitoba formula will result in a lesser impact on the long haul, high rated traffic which has been so adversely affected under the present horizontal method.

Impact on Rail Revenue

123. We now consider the impact on rail revenues by introduction of the Manitoba formula. It is our contention that rather than injuring or adversely affecting rail revenue, the introduction of the Manitoba formula will maximize railway revenues by increasing the contribution from the short haul, low rated traffic. In this regard, we would direct attention to Exhibit 153-D entitled, "Comparison of Specific Movements", showing base rates, 20% horizontal increase, and Manitoba formula (increase of 10% plus 3.5¢). The purpose of this exhibit is to illustrate the effect of the Manitoba formula on large bodies of traffic moving in 1958 which (according to the Waybill Analysis) yielded \$ 10,000 or more in revenue. The exhibit covers well over half of the total Canadian traffic as reported in the Waybill Analysis but does not include insignificant movements of only one or two cars. The exhibit itself comprised three pages dealing with all of the major commodity traffic movements. We are reproducing here, for ease of reference, selected major commodity movements, both intra-region and inter-region, to illustrate the submission of the Province.

Showing Base Rates, 20% Horizontal Increase, and Increase of 10% plus 3.5¢

| From | To | No. | Commodity | Per Waybill Analysis - 1958 | | | Amount of Increase | | Difference |
|-------|-------|-----|-----------------------------------|-----------------------------|----------------------|--------------|--------------------|---------------------|------------|
| | | | | Cwt. | Average Haul - Miles | Rate - cents | At 20% cents | At 10% + 3.5¢ cents | |
| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) | (10) |
| Ont. | Ont. | 309 | Iron Ore | 1, 116, 566 | 69 | 4.5 | .9 | 1.8 | + |
| Ont. | Ont. | 329 | Stone and Rock, Crushed | 496, 176 | 95 | 7.0 | 1.4 | 2.8 | + |
| Que. | Que. | 501 | Gasoline | 139, 108 | 96 | 18.1 | 3.6 | 5.3 | + |
| Ont. | Ont. | 501 | Gasoline | 154, 102 | 124 | 23.4 | 4.7 | 5.8 | + |
| Ont. | Ont. | 503 | Fuel, Road, Oils, N.O.S. | 130, 932 | 133 | 25.9 | 5.2 | 6.1 | + |
| Ont. | Ont. | 305 | Bituminous Coal | 228, 564 | 140 | 13.6 (A) | - | - | - |
| Alta. | Alta. | 501 | Gasoline | 87, 990 | 174 | 34.9 | 6.9 | 6.9 | - |
| Ont. | Ont. | 409 | Pulpwood | 212, 264 | 188 | 14.5 | 2.9 | 4.9 | + |
| Que. | Que. | 409 | Pulpwood | 152, 024 | 272 | 21.6 | 4.3 | 5.7 | + |
| Que. | Que. | 799 | Manufactures and Miscellaneous | 90, 484 | 337 | 53.4 | 10.7 | 8.9 | - |
| Que. | Que. | 799 | Manufactures and Miscellaneous | 78, 770 | 345 | 54.0 | 10.8 | 8.9 | - |
| Ont. | Que. | 1 | Wheat | 196, 770 | 380 | 25.0 | 5.1 | 6.1 | + |
| Ont. | Ont. | 799 | Manufactures and Miscellaneous | 25, 430 | 469 | 165.5 | 33.1 | 20.1 | - |
| Man. | Ont. | 1 | Wheat | 244, 450 | 572 | 17.8 (B) | - | - | - |
| Alta. | B. C. | 1 | Wheat | 340, 374 | 850 | 22.7 (B) | - | - | - |
| Sask. | Ont. | 1 | Wheat | 904, 004 | 866 | 22.4 (B) | - | - | - |
| Sask. | Ont. | 9 | Barley | 223, 350 | 880 | 21.6 (B) | - | - | - |
| Alta. | B. C. | 9 | Barley | 110, 358 | 901 | 23.2 (B) | - | - | - |
| Sask. | B. C. | 1 | Wheat | 252, 004 | 1057 | 24.7 (B) | - | - | - |
| Ont. | Man. | - | Manufactures and Miscellaneous | 18, 384 | 1143 | 182.0 | 36.4 | 21.7 | - |
| Ont. | Man. | 799 | Manufactures and Miscellaneous | 9, 870 | 1269 | 354.8 | 70.9 | 39.0 | - |
| Ont. | Alta. | - | Manufactures and Miscellaneous | 12, 518 | 1995 | 312.0 | 62.3 | 34.7 | - |
| Ont. | Alta. | 613 | Automobiles, Passenger | 5, 372 | 2067 | 590.1 | 118.0 | 62.5 | - |
| B. C. | Ont. | 411 | Lumber | 71, 118 | 2574 | 155.2 | 31.0 | 19.0 | - |
| Ont. | B. C. | - | Manufactures and Miscellaneous | 16, 378 | 2636 | 270.9 | 54.2 | 30.6 | - |
| Ont. | B. C. | 613 | Automobiles, Passenger | 5, 416 | 2692 | 708.1 | 141.6 | 74.3 | - |
| B. C. | Ont. | 415 | Veneer, Plywood and Built-up Wood | 18, 048 | 2724 | 183.9 | 36.7 | 21.9 | - |
| B. C. | Que. | 415 | Veneer, Plywood and Built-up Wood | 14, 330 | 2917 | 185.4 | 40.1 | 22.1 | - |
| Que. | B. C. | - | Manufactures and Miscellaneous | 11, 308 | 2917 | 260.5 | 52.1 | 29.6 | - |

(A) Coal not subject to horizontal percentage increase.

(B) Not subject to general increases account Section 328, Railway Act.

The purpose of this exhibit is to illustrate the application of the Manitoba formula to actual traffic movements.

Column 7 shows the rate that would result from an increase of 20% on the horizontal basis.

Column 8 shows the rate that would result from an increase under the Manitoba formula.

Column 9 shows the difference either as a plus or minus by the application of the horizontal increase as compared to the application of the Manitoba formula.

124. The detailed discussion of this exhibit appears at pages 15618 - 15623 inclusive in Volume 91, and we would direct the Commission's attention to this testimony for the full development of the exhibit. The exhibit shows that the increases on short haul or low rated commodities, which are most affected by the Manitoba proposal, are so small in actual cents per 100 lbs., that the overall revenues of the railway would not be adversely affected. In fact railway revenues would be better assured since the revenue from this important branch of traffic would be maximized. At the same time the application of the Manitoba formula would minimize the impact in dollars on long haul and high rated traffic which is becoming increasingly vulnerable to competitive forces. As stated by the witness for the Province of Manitoba at page 15623:

" That from the actual movement(s) that we tested against it, there was only one case where the additional increase was as high as two cents, and that happened to be (next to the one you referred to of) pulpwood, Ontario to Ontario, where the present rate is $14\frac{1}{2}$ cents. That rate would be increased under a percentage increase to 17.4 cents; under our formula to 19.4 cents and would be two cents more."

125. Impact on Shippers

It should be stressed that shippers are concerned exclusively with the actual impact of freight rate increases in cents per 100 lbs. and not with percentages on increases or other theoretical considerations. The Manitoba formula results in a lesser burden in cents per 100 lbs. on shippers collectively. The foremost consideration in devising any alternative method should be with a view to considering the impact on the high rated shipper as opposed to the low rated shipper rather than the present method which is based on a fictional average shipper.

126. It is clear that if there is to be any re-distribution or equalizing of the burden presently born by the long haul, high rated shipper without impairing the revenues of the carriers, the burden must be shifted to the short haul, low rated shipper. The low rated traffic is the only source of additional revenue open to the carriers if equity is to be maintained. This matter was discussed with a number of witnesses.

127. We refer to the submission of the Victoria Chamber of Commerce,
appearing at Page 6166, Volume 38:

" Q. It is our belief that the primary responsibility of this Commission is to devise a non-discriminatory method of imposing freight rate increases and to adjust the level of freight rates to remove the discrimination brought about by the continued use of the horizontal percentage increase." . . .

But your association would support any method which attempted to shift the apparently disproportionate burden that is now borne by the long haul shipper?

A. Definitely.

Q. And any ultimate solution would have to be something tending towards reflecting the true terminal costs as opposed to line haul costs?

A. That is right."

128. We refer to the submission of the Tree Fruit Industry of British Columbia,
at page 6723, Volume 40:

" Q. And on this field of horizontal increases, I take it that your Association would support any proposal which attempted to re-distribute the costs between terminal costs and line haul costs, and try and change some of the impact from the long haul to the short haul shipper. Your difficulty is as a long haul shipper, is it not?

A. Yes.

Q. And the horizontal increases hit you much harder than a short haul shipper?

A. Yes.

Q. So the proposal which your Association would support would be a scheme that would redistribute more equitably between the short haul and long haul shippers, the necessary increases, if any?

A. Well, we haven't gone quite that far, I don't think. All we are proposing here is that long haul traffic be given special consideration.

Q. Have you any idea where you are going to give the long haul traffic where that will pick up?

A. I see your point.

Q. So that the scheme you would support, would be some scheme that would place a little more of the increase on the short haul?

A. Yes.

Q. And a little less of the long haul?

A. You have this seven million dollars to start with there?

Q. We have suggested in Manitoba, a scheme based on a flat cents per 100 lbs. plus a percentage increase, which is an attempt to take into consideration the terminal expenses and the fact that it is involved in both short and long haul traffic?

A. Yes."

129. We would refer to the Submission of the Province of Ontario at page 7259, Volume 43:

" Q. So that I would assume that the Province of Ontario would support any scheme which tended to re-distribute equitably these cost factors between the short-haul and long-haul shippers, the difference between terminal costs and line haul costs?

Q. Fair and equitable and properly reflect costs?

A. Yes."

130. The submission of the Maritimes Transportation Commission appears in Volume 83A, particularly page 140, paragraph 330:

" It is doubtful that horizontal percentage increases distribute the burden equitably and maintain competitive relationships between various producers. In fact, the exact opposite appears to be the result of such advances under the present method."

131. At page 143, the Maritime Transportation Commission states:

" Various alternatives to horizontal rate increases have been suggested. Among them are the following:

1. A lower percentage increase on specific commodities.
2. A uniform percentage increase with maximum limitations where the resulting increase is higher than a stipulated amount.
3. A flat amount in cents per 100 lbs. for all commodities and classes of freight.
4. Varying flat amounts in cents per 100 lbs. on stipulated commodities.
5. A lower percentage increase in traffic to and from some regions than applicable within the regions.

6. The combination of a percentage increase and a flat amount in cents per 100 lbs. "

Any of the above alternatives, either singly or in combination with one another, would tend to lessen the impact of horizontal rate increases on long-haul traffic and/or specific commodities.

Any alternative formula which would produce a lesser increase on long-haul traffic and/or specific commodities must at the same time secure for the railways their revenue requirements. For an alternative formula to be workable, therefore, the answer to the following question must be in the affirmative: Will the alternative formula enable the railways to obtain from other commodities and movements, the revenue which they will be forced to forego on commodities and movements which, because of the alternative formula, are subject to a lesser increase than that produced by the horizontal formula?"

132. At page 14572, Volume 84:

" Q. I think we agreed that the present situation under the horizontal percentage increase method has resulted in an unfair burden on long haul traffic: is that a correct statement?

A. The horizontal method of increasing rates has borne more heavily on the long haul shippers.

Q. It would seem clear then, that if there is to be any shift or redistribution of this burden, the short haul will have to take up a little bit of it?

A. That is true, Mr. Mauro. That is the problem, that the short haul has not been taking up the slack. It has been escaping because of competition, because of the rise of a new transportation agency.

Q. So any scheme that is devised or acceptable must come up with some method which will shift part of the burden presently borne by the long haul captive traffic onto the short haul traffic?

A. That is right. "

Rail Objections to Manitoba Proposal

133. The only objection during the lengthy hearings of this Commission was contained in the evidence advanced by the Canadian Pacific Railway in an attempt to discredit the proposal of the Province of Manitoba. The railway called as rebuttal witness Mr. C. D. Edsforth, Vice-President, Traffic, who listed as his reasons for objection the following:

1. That the calculations used by the Province of Manitoba, with particular reference to those calculations based on

the Waybill Analysis, are inaccurate. The C.P.R. calculated that the increase in cents per 100 lbs. should be 4 1/2¢ rather than 3 1/2¢.

2. That the increased impact on short haul or low rated traffic would be excessive.
3. That the erosion and attrition factors under the Manitoba proposal would be greater than under the horizontal method.
4. That the revenue position of the C.P.R. would be impaired.

134. As summarized by Mr. Edsforth at page 18097 of the Daily Transcript Volume 109:

" Q. Then Mr. Edsforth would you give your overall assessment of the Manitoba proposal - that is, the split proposal with the modification?

A. Well, my overall assessment is this: to the extent that it increases the rates for the shorter hauls or the lower value traffic more than the straight horizontal percentage increase, the revenue result would be substantially less than from a horizontal percentage increase, and I cannot see that there would be any real offsetting benefit from the lower increases on the longer haul and higher value traffic.

So, in the overall position, I think the railways' revenue position would be seriously affected, and not only that: the shippers, particularly those of the low valued commodities, would experience great difficulties too."

135. It is our intention to deal separately with each of the objections raised.

Objection One - Calculation

136. As to the first objection, that of the apparent error in calculations, the Canadian Pacific Railway stated that based on their revenue and tonnage figures, the Manitoba formula, in order to make up an equivalent amount as that obtained through a 20% horizontal increase should be made up of a 10% increase plus 4.5¢ per 100 lbs. as compared to the Manitoba calculation of 10% plus 3.5¢ per 100 lbs. In support of their calculation, the witness submitted Exhibit 163 entitled, "Summary for Canadian Pacific 1958

Waybill Analysis", showing revenue reported for each rate classification.

This exhibit showed that the total revenue subject to increase was \$2,278,000 and the tonnage subject to increase, 247,563 tons.

137. The basis of the Manitoba calculation was submitted by Mr. Sinclair during cross examination of Mr. Stechishin and it appears at page 16308 of Volume 96. It is entitled, "Summary for Canada 1958 Waybill Analysis", by Revenue and Tons and it is reproduced herein for ease for reference.

"

Summary for Canada -- 1958 W/B Analysis

| | <u>Revenue</u> | | <u>Tons</u> | |
|--------------------------------------|-------------------|------------------|----------------|------------------|
| | \$ | | | |
| Class Rates | | | | |
| A | 422,744 | | 15,813.8 | |
| D | <u>143,080</u> | \$ 565,824 | <u>2,847.4</u> | 18,661.2 |
| Com. Non-Comp. | | | | |
| B | 1,987,666 | | 348,488.6 | |
| D | <u>59,413</u> | <u>2,047,079</u> | <u>2,509.5</u> | <u>350,998.1</u> |
| Total: Non-Comp. | | \$ 2,612,903 | | 369,659.3 |
| Competitive | | | | |
| B | 1,229,329 | | 201,350.4 | |
| D | <u>50,669</u> | 1,279,998 | <u>1,318.7</u> | 202,669.1 |
| Agreed Charges | | | | |
| B | 737,206 | | 85,713.1 | |
| D | <u>24,428</u> | <u>761,634</u> | <u>525.7</u> | <u>86,238.8</u> |
| Total Subject to Increase | | \$4,654,535 | | 658,567.2 |
| Statutory | | | | |
| B | 557,363 | | 131,808.7 | |
| D | <u>222</u> | 557,585 | <u>48.2</u> | 131,856.9 |
| Official | | | | |
| A | 12,900 | | 700.2 | |
| D | 1,546 | | 58.4 | |
| C | <u>98,537</u> | <u>112,983</u> | <u>6,950.7</u> | <u>7,709.3</u> |
| Total for Canada | | \$5,325,103 | | 798,133.4 |
| Total Revenue subject to increase is | | | \$ 4,654,535 | |
| Amount of increase at 20% | | | \$ 930,907 | |
| 1/2 of increase at 10% is | | | \$ 465,453.50 | |
| Total tons | | | 658,567.2 | |
| Increase per ton | <u>465,453.50</u> | = | 70¢ per ton | |
| | 658,567.2 | | | |

138. The Canadian Pacific Railway's calculation entitled, "Summary for Canadian Pacific 1958 Waybill Analysis", showing revenue reported for each rate classification is similarly based on the Waybill Analysis covering revenue and tons reported for the same classifications as appear in the Manitoba calculation. The Manitoba calculation is based on all traffic reported to the Board of Transport Commissioners which data form the basis of the Waybill study. The Canadian Pacific exhibit is based on the Waybill Analysis but is confined to the actual revenue and tonnage from Canadian Pacific records. The major difference is that the Manitoba calculation based on 659,000 tons reported by all railways reporting results in a figure of 70¢ per ton or 3.5¢ per 100 lbs. The Canadian Pacific calculation based on its tonnage of 248,000 tons results in a figure of 92¢ per ton or 4.5¢ per 100 lbs. We have made a subsequent calculation, which follows, setting out a comparison of the total revenue and tons as reported to the Board of Transport Commissioners as shown on page 16308 of Volume 96 with the Canadian Pacific Railway figures as per Exhibit 163. The resulting calculation is the total as per the Waybill Analysis less Exhibit 163.

| | Total per page 16308 | C. P. R. per exhibit 163 | Total less C. P. R. (calculated) |
|------------------------------|-------------------------|-----------------------------|--|
| <u>Revenue:</u> | | | |
| Class rates | \$ 565824 | 171450 | 394374 |
| Commodity rates: | | | |
| Normal | 2047079 | 1097846 | 949233 |
| Competitive | 1279998 | 588390 | 691608 |
| Agreed charges | <u>761634</u> | <u>421086</u> | <u>340548</u> |
| Total subject to increase | 4654535 | 2278772 | 2375763 |
| Statutory | 557585 | 338200 | 219385 |
| Other | <u>112983</u> | <u>193255</u> | (80272) |
| Total Traffic | <u>\$ 5325103</u> | <u>2810227</u> | <u>2514876</u> |

Tons:

| | | | |
|------------------------------|-----------------------|---------------|---------------|
| Class rates | 18661 Tons | 5789 | 12872 |
| Commodity rates: | | | |
| Normal | 350998 | 114201 | 236797 |
| Competitive | 202669 | 83567 | 119102 |
| Agreed charges | <u>86239</u> | <u>44006</u> | <u>42233</u> |
| Total subject to increase | 658567 | 247563 | 411004 |
| Statutory | 131857 | 78859 | 52998 |
| Other | <u>7709</u> | <u>34300</u> | (26591) |
| | <u>\$ 798133 Tons</u> | <u>360722</u> | <u>437411</u> |

Summary

| | | | | |
|----|--|------------------|------------------|-----------------|
| A. | Total revenue subject to increase | \$4654535 | 2278772 | 2375763 |
| B. | Amount of increase at 20% | \$ 930907 | 455754 | 475153 |
| C. | 1/2 of increase | \$ 465453 | 227877 | 237576 |
| D. | Total tons subject to increase | 658567 | 247563 | 411004 |
| E. | Increase per ton <u>Line C</u> <u>Line D</u> | <u>70 cents</u> | <u>92 cents</u> | <u>58 cents</u> |
| F. | Increase per 100 lbs. | <u>3.5 cents</u> | <u>4.5 cents</u> | <u>3. cents</u> |

139. The important figures in this statement show that the increase per ton as per the Waybill Analysis would be 70¢ - per Canadian Pacific Exhibit 163, 92¢ - and for all traffic other than the C. P. R. traffic - 58¢. Therefore, the increase in cents per 100 lbs., using the Manitoba formula would be, if based on the Waybill Analysis, 3.5¢; if based on the Canadian Pacific

Railway calculation 4.5¢; if based on the figures of railways other than the Canadian Pacific Railway, 3¢. This supports the contention of the Province of Manitoba that the 3.5¢ calculation is a more accurate reflection of the actual experience of railways reporting to the Board of Transport Commissioners and represents a more accurate figure based on the actual tonnage-revenue situation in Canada in 1958.

140. It should be re-emphasized that the Manitoba calculation was based on the assumption that the increased costs, terminal as opposed to line haul, were on a fifty-fifty basis. Manitoba is not suggesting nor are we pre-determining that this would be the final result of the calculation. As mentioned by the witness, Stechishin, if subsequent study demonstrated that the terminal factor was 40% rather than 50% of the total required increase, then a lesser cents per 100 lbs. figure would result. Similarly, if a subsequent calculation demonstrated that the terminal factor was larger than 50%, then a larger cents per 100 lbs. figure would result. The final calculation of the cents per 100 lbs. figure is incidental to the operation of the alternative proposal. The next general rate increase might be based on the lesser cents per 100 lbs. figure, as demonstrated by the comparison between the figures regarding revenue and tons contained in the Waybill Analysis, Canadian Pacific Railway Exhibit 163 and the calculation based on other traffic. In other words, the next rate increase could be based on 3¢ per 100 lbs. and the balance made up by way of a percentage increase. This would have a lesser impact on the low rated traffic and would give a better opportunity to assess the effect of this method both on the movement of traffic and the revenues of the rail carriers.

Objection Two - Impact on Low-Rated Traffic

141. The next item which formed the basis of objection by the Canadian Pacific Railway was the impact of our proposal on low rated traffic. Under direct examination, Mr. Edsforth at page 18082 stated:

" Q. Well, Mr. Edsforth, 10% plus $3\frac{1}{2}\text{¢}$ and 10% plus $4\frac{1}{2}\text{¢}$, that is not too meaningful, is it?

A. Well, it is 1¢ per 100 lb. difference and that is quite meaningful in the lower rates. If you have a rate of 5¢ per 100 lbs. an additional increase of 1¢ is a 20% increase... The Manitoba formula would produce an increase of $\frac{1}{2}\text{¢}$ from the 10% factor and a further $3\frac{1}{2}\text{¢}$ from the flat amount, or an increase overall of 4¢ per 100 lbs. or 80%... It does make a difference. "

142. However, under cross examination, at page 19577 of Volume 118,

Mr. Edsforth admitted:

" Q. - Now you will agree in comparing the effects of the two proposals, you have to take into consideration the modification?

A. Yes, I think I did say so, too.

Q. Have you Exhibit 164 before you?

A. Yes, I have.

Q. You will note that under both the Manitoba calculation and under the Canadian Pacific calculation, a rate of 5¢ per hundred would increase to a maximum of 2¢?

A. That is right. I pointed that out later on, I think."

143. The intent of the Canadian Pacific Railway in their direct examination and their continued insistence in cross-examination, was to show that the Manitoba formula would have such a grave impact on low rated commodities as to either create a complete inequity against the short haul and low rated shipper or impair the revenues of the railway by making this traffic move to some other mode of transportation. In the evidence presented to this Commission by the Province of Manitoba, this matter was considered and illustrated by Exhibit 153-D, "The Comparisons of Specific Movements, Showing Base Rates, under a 20% horizontal increase and under the Manitoba proposal with modification". As admitted by the witness, Edsforth, in order to properly consider the Manitoba formula it must be considered along with the modification. In Exhibit 153-D the only commodities which moved at a rate of 5¢ or under were copper, nickel ore and concentrates in Ontario movements having an average haul of 16 miles, which moved at an average rate of 3.2¢ per 100 lbs. Under the 20% horizontal increase method, this rate would increase to 3.8¢ per

100 lbs. or an increase of .6¢. Under the Manitoba proposal, this rate increased to 4.5¢ per 100 lbs. or an increase of 1.3¢. The difference in the present method and the Manitoba proposal, as it would affect this particular low rated movement, would be .7¢ per 100 lbs.

144. The second movement that would come within that very low rated category, which Mr. Edsforth speaks of, was iron ore which moved an average of 69 miles at a rate of 4.5¢ per 100 lbs. Under the horizontal increase of 20%, this rate would increase to 5.4¢, or an actual increase of .9¢ per 100 lbs. Under the Manitoba formula, this would increase from 4.5¢ to 6.3¢ per 100 lbs. or an increase of 1.8¢. The difference between the horizontal method and the Manitoba method, as it would affect this particular movement, would be .9¢ per 100 lbs.

145. The third movement that we were able to ascertain as being 5¢ or under per 100 lbs., was a movement of sand and gravel within the Province of Quebec, having an average haul of 72 miles and an average rate of 4.7¢ per 100 lbs. Under the horizontal method of increase of 20%, this would result in a rate of 5.7¢, or an increase of 1¢ per 100 lbs. Under the Manitoba formula it would increase from 4.7¢ to 6.6¢, or an increase of 1.9¢. The difference between the horizontal method and the Manitoba proposal would be .9¢ per 100 lbs.

146. It is difficult to accept the arguments of the Canadian Pacific Railway that commodities such as copper, nickel and ore concentrates, iron ore, sand and gravel moving such short distances as those set out and involving rate differentials as between the Manitoba proposal and the present horizontal method of .7¢, .9¢ and .9¢ per 100 lbs., would result in the loss of this traffic to some other mode of transportation or in any way result in an inequity against the shipper of such commodities. It is submitted that if these commodities, as suggested by the Canadian Pacific, are unable to sustain additional increases of .7 cents, .9 cents and .9 cents per 100 lbs., then they would be unlikely to sustain an increase under the horizontal method. It is obvious that this is an attempt on the part of the Canadian Pacific Railway to confuse the real issue involved in this matter

by causing fear or suspicion regarding the effect or impact of the Manitoba proposal. It is clear that if the present inequity, resulting from horizontal increases on long haul traffic, is to be alleviated, some of the burden resulting from increased costs must be more equitably distributed on short haul or low rated commodities.

147. The increases under the Manitoba proposal on the low-rated commodities set out in Exhibit 153-D would not result in an inequitable situation. On the other hand, the proposal would have a beneficial effect due to the reduction in the increases on the long haul, high rated traffic. A straight division of any increase in cents per hundred pounds plus a percentage increase could not be effective across the board because of the impact it would have on such low rated commodities as sand and gravel, iron and other ore concentrates. The modification was therefore introduced. To the extent that the modification results in a lesser amount being attached to the low rated commodities, the long haul, high rated traffic is absorbing this increase and in fact, subsidizing the carriage of the low rated commodities. The sole purpose and the effects of the Manitoba formula are to alleviate the inequity of the present method as it applies to long haul, high rated traffic. The formula in no way results in an inequity against low rated traffic.

Objection Three - Erosion And Attrition

148. The witness, Edsforth, referred to the very competitive situation of traffic moving between Toronto and Montreal and alleged that this would be an area that would suffer greatly if the Manitoba proposal was put into effect. However, under cross examination at page 19586 of Volume 118, it was demonstrated that the Manitoba proposal, as compared to the present method, would in no way adversely affect the railway's competitive position.

" Q. Let us look at one; you mentioned in your evidence this matter of the Montreal to Toronto area is one of the most active you know of and that it is frequently termed a short haul. I think we should look at this. I assume this is one of the important areas for Canadian Pacific?

A. It is one of the important areas.

Q. And you are concerned, in what you have just told us,

that under the Manitoba formula you would be unable to increase your rates and maintain the traffic as you presently do under the horizontal percentage system?

A. That is on the lower rated traffic, the short haul, it works both ways.

Q. That is what the Manitoba formula is intended to do, let us be clear on that.

Q. At volume 106, Mr. Roberts was being examined by Mr. Brazier page 17747. On that page Mr. Brazier put into evidence, Tariff C.T.C. 5,253, dated July 4, 1960, on all types of general commodities, Montreal and Toronto?

A. Yes.

Q. And he put on the rates:

| | | | | |
|-------------|-------------|-------------|-------------|-------------|
| 20,000 lbs. | 24,000 lbs. | 30,000 lbs. | 40,000 lbs. | 60,000 lbs. |
| <u>45¢</u> | <u>40¢</u> | <u>38¢</u> | <u>36½¢</u> | <u>33½¢</u> |

A. Yes, I see this in the record.

Q. Now, I would like to put on the record the comparison of the results in applying the Manitoba formula and horizontal percentage increases to these rates?

A. This is 20%?

Q. Yes, the same formula and basis, Mr. Edsforth, and the increase we will be applying taken from Exhibit 153-E but I will give this to you so that you can authenticate them."

149. The comparison of 20% increase and the Manitoba formula to this

important body of traffic moving from Toronto to Montreal, showed the following:

| Weight | 20,000 lbs. | 24,000 lbs. | 30,000 lbs. | 40,000 lbs. | 60,000 lbs. |
|----------------------------------|-------------|-------------|-------------|-------------|-------------|
| | <u>45¢</u> | <u>40¢</u> | <u>38¢</u> | <u>36½¢</u> | <u>33½¢</u> |
| Original rate | 45¢ | 40¢ | 38¢ | 36½¢ | 33½¢ |
| Increase under Manitoba formula | 8¢ | 8¢ | 7¢ | 7¢ | 7¢ |
| Increase under Horizontal method | 9¢ | 8¢ | 8¢ | 7¢ | 7¢ |

In short, the application of the Manitoba formula to this important traffic movement between Toronto and Montreal would result in rates either identical or less than the rates under the present horizontal method.

150. Another illustration of the attempt by the Canadian Pacific to throw doubt on the Manitoba formula was in regard to commodity movements such as

sugar beets. At page 19591 of Volume 118:

- " Q. Now, you have referred to the fact that it would be difficult in many cases to apply the increase under the Manitoba formula, and you used as one of your examples a movement of sugar beets?
- A. Yes, that is right.
- Q. You said that it would be more difficult to apply the Manitoba formula to the movement of sugar beets as compared to the horizontal percentage method.
- A. Yes.
- Q. You said it would be almost impossible to apply the rate increase brought about by the Manitoba formula compared to the horizontal percentage increase?
- A. Yes, I said there were certainly great difficulties for somebody, either the railway or the shippers.
- Q. How much of the last 17% increase did you apply on the movement of sugar beets in Manitoba?
- A. I do not think we were able to hold any of it.
- Q. You do not think under the Manitoba suggestion, you will be able to apply our method of increase to traffic you have been unable to apply increases to in the past?
- A. Well, Mr. Mauro, the only difference is that your increase being greater on the short haul, the short fall on revenue becomes greater.
- Q. How can you use as an illustration the sugar beets in Manitoba movement, comparing it with the horizontal percentage method, when you were not able to apply one percentage point?
- A. What happened two years ago does not necessarily happen again. One must always look to the future."

151. It is respectfully submitted, that such argument on the part of the Canadian Pacific Railway, pointing to commodities on which it would be difficult to apply the Manitoba formula, when these very same movements were unable to sustain any increase under the horizontal method, is completely unworthy of any consideration. The Province of Manitoba has never suggested that our method would bring about any mystical achievement in the field of rate application. We are not

suggesting that our method would permit the Canadian Pacific Railway to apply increases that they were unable to apply under the horizontal percentage method. What we do suggest is that in those cases where the horizontal percentage method was applicable, particularly in the case of the low rated traffic, our proposal with its modification would not create such an impact as to cost the carriers the loss of any substantial volume of the traffic. Moreover, since the impact on the long haul high rated traffic would be less and the competitive impact on this traffic from other modes of transportation would be decreased, the revenue situation of the railways would be better protected.

Objection Four - Impairment of Revenue

152. In a final attempt to dissuade from any tampering with the present method, this Commission was advised that the great fear of the Canadian Pacific Railway is that the Manitoba proposal would adversely affect the revenue position of the carrier. The subtle suggestion in this type of argument is that the present method is safeguarding the revenues of the railway. In other words, that the present method is, in fact, providing the necessary increases required by increases in costs. Nothing is further from the truth. The failure of the present method, in fact, the basis of Manitoba's proposal for an alternative, results from the obvious conclusion that the horizontal method is not only a vicious method as applied to the long haul high rated traffic but that it has failed to provide the necessary revenues for the rail carriers. The railways in evidence presented by senior officers have indicated that in not one year since 1946 have the railways attained their permissive level of earnings. Exhibit 162 purported to set out the revenues received by the Canadian Pacific Railway during a twelve month period from the most recent 17% increase. If, the present horizontal method were guaranteeing to the railways their permissive level of earnings, then one would have to look very closely at any

alternative proposal that might affect or make less likely their attainment of their earnings. What degree of success has the Canadian Pacific Railway achieved in obtaining their necessary earnings under the horizontal percentage method?

153. Exhibit 162 was discussed with Mr. Edsforth and the complete testimony covering this matter appears at Volume 118, page 19527 to 19536 inclusive. We presented a statement to the Commission concerning a comparison between Exhibit 162 and the estimated revenues that would be received from the 17% increase which appeared in the Judgment of the Board of Transport Commissioners dated November 17, 1958.

| | Estimated revenue January 1 - December 31, 1959 | Actual revenue December 1, 1958 to November 30, 1959. | Realized Over (under) estimate |
|--------------------------------------|--|---|--------------------------------------|
| | <u>Exhibit 58 - 22</u> | <u>Exhibit 162</u> | |
| Normal: | | | |
| Coal and coke | \$ 15,500,000 | | |
| All other "normal" freight | <u>132,700,000</u> | | |
| | <u>\$148,200,000</u> | <u>77,100,000</u> | <u>71,100,000</u> |
| Competitive | <u>50,600,000</u> | <u>59,000,000</u> | <u>8,400,000</u> |
| Agreed charges | <u>48,400,000</u> | <u>36,000,000</u> | <u>12,400,000</u> |
| Total traffic subject to increase | <u><u>\$247,200,000</u></u> | <u><u>172,100,000</u></u> | <u><u>75,100,000</u></u> |

154. The estimate appearing in the appendix to the Board's Judgment totalled \$247.2 millions of dollars. The estimate as submitted in Exhibit 162 on all traffic was \$172.1 million. This was, the traffic which would be subject to the increase in both cases. At the time of the last general rate increase in November, 1958, the Canadian Pacific Railway applied for a 19% horizontal increase to yield \$26,600,000. The Board in their Judgment of November 17 authorized an increase of 17% which they determined would return the necessary moneys required. Mr. Edsforth in his discussion on this matter under re-examination by Mr. Sinclair stated at page 19737:

" A. Now of course, the estimated revenue yield from the 19% we were asking for at that time, for that period, January 1 to December 31, 1959, was shown as 26.6 millions, approximately.

Q. Yes.

A. But we did not get the 19%; we only got 17%. And so, the revenue yield from the 17% would be somewhat less than from the 19%. But I estimated on the basis of the traffic shown in the estimate there that the 17% would give us in the range of twenty four millions of dollars, approximately. "

155. We will adopt this figure of \$ 24,000,000, submitted by the Vice-President, Traffic, Canadian Pacific Railway, a man with a very lengthy period of experience in applying horizontal percentage increases and one who has calculated erosion and attrition factors under this method of rate increases. We turn to Exhibit 162 and calculate the amount actually received by the Canadian Pacific Railway:

" From normal traffic, the railway expected to receive \$21,700,000,
they actually received \$ 12,000,000.

From competitive traffic they had expected to receive \$ 4,800,000,
they actually received \$ 6,000,000.

From agreed charges they expected to receive an additional
\$500,000. They received no additional monies, from agreed
charges, in fact, there was a reduction.

156. The total anticipated increased revenue as per the appendix to the Board's order was \$26,600,000. The anticipated increase as per Mr. Edsforth's evidence above referred to was \$ 24,000,000. Let us assume for our purpose here that Mr. Edsforth's figure in his testimony is the accurate one. The railway therefore, expected from the 17% an increased revenue of \$24,000,000,
they actually received approximately \$18,000,000. This is a difference of \$6,000,000 or an error in estimate bordering on 25%. We point this up to demonstrate that there can be no high degree of accuracy in the present method of horizontal increases when a man of Mr. Edsforth's ability and long experience in a specific company is able to estimate revenues of \$24,000,000 and have a short fall amounting to 25% of his estimate. The

accuracy of Mr. Edsforth's calculation cannot be seriously challenged.

Therefore we must conclude that the method of granting freight rate increases by horizontal percentages is no longer capable of guaranteeing satisfactory revenue yields to the railway.

157. It should be remembered, that the estimated increased revenues of \$24,000,000, was the figure after Mr. Edsforth had made allowances for attrition and erosion. Allowing for all of these qualifications and considerations, Mr. Edsforth's estimate fell \$6,000,000 short of the revenues actually received under the horizontal method.

158. While Mr. Edsforth's calculation as to attrition and erosion was based on an increase of 17%, the actual increase was only 10%, due to the interim subsidy from the Federal Government. With this reduction in increase 17% to 10%, one would expect a greatly reduced attrition and erosion and yet we find a short-fall in excess of \$6,000,000. One can only conjecture what would have been the short-fall had the full 17% been imposed.

159. The Province of Manitoba does not suggest that our formula will achieve any greater certainty of revenue yield than does the present method. We do strongly urge that under our proposal, when properly applied and taking into consideration the erosion and attrition factors that must be introduced in any scheme for rate increases, could certainly come well within the margin of 25% as evidenced by the most recent 17% horizontal increase.

Recommendation

160. The Province of Manitoba recommends that future rate increases be applied by way of cents per 100 lbs. plus a percentage increase, the cents per 100 lbs. factor to reflect increased terminal costs, the percentage factor to represent increased line haul costs.

CHAPTER 3

REGULATION OF WATER RATES

The next matter we deal with is the regulation of water rates by the Board of Transport Commissioners.

Jurisdiction of Board

160. Section 9 of the Crow's Nest Pass Agreement dated September, 1897, states as follows:

"So soon as the said railway is open for traffic to Kootenay Lake, the local rates and tolls on the railway and any other railway used in connection therewith and now or hereafter owned or leased by or operated on account of the company South of the Company's main line in British Columbia, as well as the rates and tolls between any point on any such line or lines of railway and any point on the main line of the Company throughout Canada, or any other railway owned or leased by or operated on account of the Company, including its lines of steamers in British Columbia shall be first approved by the Governor in Council or by a Railway Commission, if and when such Commission is established by law, and shall at all times thereafter and from time to time be subject to revision and control in the manner aforesaid."

161. As one of the conditions of the Crow's Nest Agreement, the Canadian Pacific Railway agreed to submit to control of a railway commission with regard to the setting of rates. It was a matter of national policy to have future rates established by the Canadian Pacific Railway controlled by a public body. Such a body was created in 1903 and rates for the movement of commodities both east and west were reviewed by that agency. We submit that one of the chief purposes, if not the chief purpose, for the Government requiring this undertaking by the railway was the Government's wish to have a more equitable structure or a less discriminatory rate structure for the movement of commodities, particularly to

the Western region of Canada. We would refer the Commission to our chapter on National Policy where this matter is discussed in detail at page 16.

162. Since 1903, rates in Canada have been under the absolute control of the Board of Railway Commissioners. In dealing with railway applications for general increases, the Board has adopted what is commonly referred to as the "requirements formula", under which the railway companies apply to the Board for general rate increases in order that they may be permitted to earn sufficient revenues as established under the formula.
163. In 1938 the Board became known as the Board of Transport Commissioners and its jurisdiction was extended to the regulation of inland water carriers of package freight. This aspect of water transportation is of importance, particularly to the economy of the Prairie Provinces and more so to the Province of Manitoba. We are referring to the movement of commodities over the inland waterways system of the Great Lakes. This is an opportune time to discuss this matter since during the summer of 1959 the St. Lawrence Seaway system was officially opened to permit the movement of commodities from the Atlantic up to the Lakehead ports of Port Arthur and Fort William.
164. In order to increase their rates on package freight, the lake carriers must obtain the approval of the Board of Transport Commissioners but in the case of these lake carriers a strange and startling procedure, in comparison to that governing the

movement by rail, has been followed by the Board. As mentioned above, the railway companies are required by law to come forward and show cause as to why the existing rates on rail freight movements should be increased. The water transportation companies have been permitted in each and every case to raise their rates to maintain a so-called differential level between water rates and rail rates, and the level so resulting has been permitted without any requirement on the part of these water carriers to show cause for the increases.

165. The best illustration of the inequity of such a procedure can be seen with reference to the most recent general freight rate increase application by the railways in 1958. In that case, without making an appearance before the Board of Transport Commissioners, the water carriers by the simple medium of sending a telegram to the Board were permitted to raise their rates to maintain the differential level between water rates and rail rates. The particularly shocking aspect of this matter is that the railway application in that case was based solely upon increased cost to the railways resulting from a wage award to railway employees. As a result of these increased wage costs to the railway, the procedure adopted by the Board of Transport Commissioners, resulted in the lake carriers being granted permission to increase their rates by an identical amount. (See 77 CRC 113 at page 138)

166. Shippers in Western Canada realize that they cannot expect to have all of the competitive features with respect to the movement of goods by water that presently exist in the Provinces of Ontario and Quebec. It is of concern to the Government of the Province of Manitoba to see that one aspect of Manitoba's geographical location which might be of advantage to us is being minimized by the present practice of the Board of Transport Commissioners. This matter was not discussed before the Turgeon Commission in 1949 but it was raised before the Board of Transport Commissioners by the Canadian Manufacturers Association during the Equalization hearings in 1954. (See 72 CRC 1 at page 34)

" The Association objects to the making of water-rail rates by differentials below the all-rail rates, and submitted that the Board should investigate the cost of moving traffic via water-rail routes, and especially all-water routes, with a view to establishment of rates based on the characteristics of water-borne traffic, rather than relating such traffic to all-rail rates."

167. Subsequently shippers in Manitoba requested a specific hearing before the Board of Transport Commissioners. This hearing was held in February 1958 (48 J.O.R.R. page 492) and the Board refused to change the procedure in the setting of these rates and stated at page 500:

" No recommendation was made by any interested party to the Royal Commission (Turgeon), nor by the Royal Commission, with regard to differential rates, and it is a reasonable assumption that all the parties expected that the differential rates would be made by deducting the usual differentials off the all-rail rates, which was done, with some minor changes."

168. It is this unfounded assumption on the part of the Board that has prompted the Province of Manitoba to place the problem before this Commission so that the inequity of the present procedure can be fully considered and recommendations made for the alleviation of such inequity. It is apparent from the above quoted dicta of the Board of Transport Commissioners that that body is looking for direction from such a Commission as the present one.

Manitoba Position

169. It is the belief of the Province of Manitoba that under the present policy of differential pricing of water services that the Manitoba and Prairie shipper is being denied the full benefits of this low cost means of transportation for which he is so advantageously located geographically. We submit that in the case of water transportation, the lake carriers be required to price the movement of commodities in accordance with the cost factors of water transportation.
170. At the time of the construction of the St. Lawrence Seaway it was stated that the Seaway would be of prime importance to national economic development and that the beneficial effects of this great inland waterway would not be limited to a particular region of Canada but would make available to the great heartland of Canada the benefits of ocean and lake transportation. It is our respectful submission that unless a clear legislative directive be given

to the Board of Transport Commissioners with respect to the present differential method of rate making, national policy applicable to the carriage of goods by water will be frustrated with harmful effects to the economy of the Prairie region and of Manitoba in particular.

History of Present Differential Pricing

171. The detailed evidence submitted by the Province of Manitoba on this matter appears in the evidence of Mr. Stechishin at pages 15710 et sequa, Volume 92. The witness discusses at page 15713 the historical background and development of the differential pricing basis. As explained the basis for the construction of the all-rail rates consisted of three factors:

1. the cost of moving by water to the Lakehead
2. the rail rate beyond to destination
3. the premium or differential which was added to the sum of the other two.

The significant element here is that the level of rail rates was governed by the level of water rates and that successive reductions were made in the rail rates until a satisfactory traffic volume was achieved.

172. During the first world war the demands of wartime commerce ~~all but eliminated package freighters from the Great Lakes.~~ The few remaining ~~lakers~~ whose rates were not yet controlled responded to the law of supply and demand and raised their rates in disregard of the differential which the railways used to

measure the difference in the value of the two services. On April 23, 1917, the railways filed new tariffs increasing the eastern factor in the through lake and rail rates by the same amount as the increase taken by the water carriers. The Board of Railway Commissioners suspended the proposed tariffs until an investigation had been made. The Board then permitted the increase effective September 1, 1917. This increase in the eastern factor resulted in an increase in the through East-West rate by the same amount taken by the water carriers. It is important to note that the rates were not increased by a percentage of the existing rates but by a flat amount. The lessening of the water competition increased only that portion of the rate subject to water competition and did in no way affect the Lakehead-West portion of the rate. It should follow, that if an increase in non-competitive rail rates were granted, only that portion of the through rate not subject to water competition should be increased.

173. At page 15715, the following discussion between Counsel and the witness for Manitoba appears:

" Q. I wanted to have this clear: when this scheme of competing modes of transportation, water and rail, came into existence, the water carriers set a rate level reflecting their costs characteristics, and the railways lowered their rates until they got to a point where they were achieving a satisfactory traffic flow.

A. Somewhat above that level, yes.

Q. Due to their cost characteristics. Then, in 1917 the water carriers realizing they were in greater demand and there was less space available, increased their rates and the railways moved up under that umbrella but only raised their portion from the east to Fort William.

A. That is correct. ...

Q. What is the real significance of this historical summary you have presented to the Commissions?

A. The important thing to note here, is that the competition on the eastern factor was very real, but the rate charged by the railway reflected the competition where it existed, that if competition lessened, the rail rate reflected this lessening and tended to return to normal, and finally that each portion of the through rate was treated separately to reflect the different transportation characteristics.

Q. Therefore, what you are alleging, here, Mr. Stechishin, is that there was a time when there were, in fact, competing modes of transportation each reflecting their own characteristics and that as the situation changed the rate structure changed?

A. That is correct.

Q. And if it was a lake and rail competitive situation, then that portion of the rail rate which was subject to water competition reflected changes in the water competitive factor?

A. That is right."

175. At page 15718:

" Q. So that a rate from Toronto to Winnipeg was made up of the rate from Toronto to Fort William by water, or the competitive rate, as a result of that rate plus the overland rail rate from Fort William to Winnipeg?

A. That is right."

176. At page 15722:

" Q. So that in a freely competitive situation when the water competitive factor became more compelling, Winnipeg benefited?

A. That is right.

Q. And when the competitive factor was lessened Winnipeg took their losses?

A. Relatively greater or lesser to the points west of us, depending on whether it was downwards or upwards."

177. As indicated, the Transport Act of 1938 placed package freighters and their rates under the control of the Board of Transport Commissioners. With the second world war and price control, no rate increases were granted until the application of the Railway Association for a 30% increase in 1946. In the Order of this application and in all following Orders, including the 17% increase granted in 1958, The Board of Transport Commissioners has permitted the lake carriers to preserve the differential arbitrarily established 50 years previously. Despite the fact that the Transport Act subjects the rates of the water carriers to the same rigid control requirements as rail rates under the Railway Act, the water carriers' need for an increase has never been tested in open court while the testing of railway increases has been exhaustive.

At page 15725, Volume 92:

" Q. What alternative policies were available to the Board of Transport Commissioners in the setting of these lake and rail rates?

A. ... The Board of Transport Commissioners had four choices open to them.

1. They could have determined the increase in cost of carriage by water and granted the water carriers an increase reflecting any increased cost.
2. They could have determined the average increase in costs for all carriers under their jurisdiction, that is, rail and water and granted each carrier an increase based on this average increase in costs.

3. They could have determined the increase in rail costs and granted the water carriers the same percentage increase.
4. They could have determined the increase in rail costs and permitted the water carriers to maintain the former differential under the new all-rail rates thereby granting them an increase of the same number of cents per one hundred pounds."

Boards Policy of Differential Pricing

178. Commencing at page 15727, these four procedures are discussed in detail. The Board elected to follow the fourth procedure; namely, that the water carriers be permitted to maintain a differential under the rates charged by the rail carriers, and at page 15732 the following appears:

" Q. Mr. Stechishin, as I see it, under this fourth method, the rate that the water carriers are permitted to charge is in no way attached to the carriers' cost itself?

A. None whatsoever.

Q. None whatsoever?

A. It is designed to protect the increase in the rail rate.

Q. And as a matter of fact in the illustration that you have just referred to, while the rail rates went up 150%, the resultant increase in water carriers' rates under this method resulted in an increase of 197%?

A. That is correct.

Q. So that, not only was the basis for the fixed rate in no way reflecting the actual cost of the carrier, but the resultant rate structure permitted the water carrier to get a much larger increase than did the rail carriers?

A. That is correct. I should clarify that in this last illustration I follow the principle adopted by the Board right through, and this method, number 4, does not allow for the changes which resulted from equalization

of the class rate scale, although the principle was maintained all the way through, but some of the rates were affected by the class rate equalization.

179. Under the historical development of lake and rail rates there was not a fixed differential, but a differential resulting from a traffic movement and the cost characteristics of the respective carriers. Under the present method of a fixed differential between lake and rail rates the result is that the actual percentage increases are greater for one carrier than for another.
180. The first method would have been the most equitable since water rates would then be based on the water carriers' cost and requirements and would not bear any arbitrary relationship to other modes of transportation. The fourth method is the most inequitable, since increases in water rates bear no relationship to increases in water carriers' costs and requirements. The Board has elected to follow the fourth method in all post-war rate increase applications. Instead of applying an independently determined percentage increase or limiting the water carriers to the same percentage increases granted to the railways, the Board of Transport Commissioners by using the differential method of determining water and rail rates not only gave the water carriers gratuitous increases but gave them increases in a greater percentage than to the railways who proved their need.
181. At page 15734, in dealing with tables submitted in the Manitoba submission the witness comments on Table 10:

" This table shows that an increase in the rail rate to Fort William from Eastern Canada has gone up by 117% (since 1946). That is the rate that the shipper pays; the railways actually receive 145% because of the bridge subsidy, but the water rate to Fort William has gone up from \$1.06 1/2 to \$3.97 (per 100 lbs.) or an increase of 274%.

... Despite the fact that the railways testified that the water competition was equally pervasive in 1953, the Board of Transport Commissioners in promulgating the equalized class rate scale, recognized this competition in a most peculiar manner. The rate from Toronto to Fort William is now 100% of the rate from Fort William to Moose Jaw and not 39% below as it was the day before the order was issued. This would suggest that the Board of Transport Commissioners had decided that competition no longer existed. However, the Board also ruled that groups A and B, which owed their existence to water competition should remain intact but in an amended form. Thus in the one order, the Board of Transport Commissioners denied to Western shippers the primary benefit of competition in the form of lower rates, and preserved for all eastern shippers outside Toronto the benefit of competition in the form of parity of rates.

Having apparently concluded that competition should no longer affect the rail factor to Fort William, at least from Toronto, the Board abolished the basis of using one factor to the Lakehead and another beyond, and substituted therefore, a single factor through rate based on the rail mileage from Toronto. This in itself is not subject to criticism if the purpose was to establish a "ceiling" rate not reflecting competition. However, having established the ceiling, the Board of Transport Commissioners then prescribed that the lake and rail rate should be determined by deducting differentials from this ceiling. Since certain Canadian National routes are determined by using the mileage via Armstrong, the lake and rail rate, perforce, is determined over an inland route."

182. At page 15743, commenting on Table 11, the witness stated:

" This table shows that if the same degree of competition were reintroduced into the rate structure as is claimed exists by the railways, the class 100 rate to Winnipeg would be reduced by 55¢, to Regina by 50¢ and to Edmonton by 40¢ per 100 lbs. Conversely, it follows that because this competition is not allowed not to manifest itself, Winnipeg is penalized 55¢, Regina 50¢ and Edmonton 40¢ per 100 lbs.

I might add here that just recently the Board of Transport Commissioners turned down an application of a water carrier who proposed a rate below that prescribed, and they were advised that they would not be granted a licence unless they filed a rate scale which was more consistent with that filed by the present water carrier."

183. At page 15746, the witness is questioned by the Chairman as follows:

" Q. Have you tried to put a dollar mark on the savings to the shipper?

A. Well, I have used a 40% reduction.

Chairman. But how many dollars?

A. I understand there are about 600,000 tons moving into Winnipeg via lake and rail. Now how many tons more would move if you had a better rate structure, I can't begin to guess. We would have to know how much the reduction was and how much that reduction would increase the traffic.

Q. - Mr. Mauro In other words, Mr. Stechishin, this points up the situation that would result in a more realistic rate structure as pervasive throughout the west and not only at Winnipeg?

A. Yes.

Q. Then the real gainer in dollars and cents is the Calgary shipper?

A. Yes; the further inward you go the more benefit there would be. "

Support for Manitoba Position

184. The position of the Province of Manitoba in this matter has been supported by various parties appearing before the Commission. We refer to the submission of the South Western Ontario Chamber of Commerce commencing at page 7289, Volume 43:

" Water rates westbound to be established to better reflect cost of operating distance involved or eastbound water rates to be established on present westbound equalized principle. It seems quite logical to predict the economical advantages of the seaway for this region to be decidedly hindered if water rates continue to be related closely to rail rates. For the success of any venture large or small an incentive must be provided for its use. Full scale water economy is necessary then for the success of the seaway, permitting amortization of the large investment in this venture by our Federal Government, and providing the economies of transportation promised by its inception. While water rates from Windsor to the Lakehead are very slightly below those from Toronto and Montreal, they do not, in our opinion, reflect the cost of operating distance."

At page 7290:

" Because of the westbound water rates existing today, it is logical to believe that this form of 'equalization' is not providing the true water economy for this region on our shipments. . . . We request that water rates be established westbound to better reflect the cost of operating distance from ports in this area to the Lakehead, providing this region with the westbound water rate advantage greater than the small advantage presently existing."

185. We also refer to the testimony of Mayor Norman Wilson of the City of Port Arthur at page 12400, Volume 70.

" Water rates play an equally important role in the development pattern of this area. We therefore submit that your Commission give consideration to revision of the present policy of the Board of Transport Commissioners in permitting the lake carriers to raise their rates automatically to maintain a fixed differential below rail rates. It is our firm conviction that such a policy tends to minimize our geographic advantages and also denies to prairie shippers the inherent economies of water transportation. We support fully the submission of the Province of Manitoba on this matter. . . . We further agree with the Province of Manitoba that if such amendment to the present legislation are made, they will have the effect of facilitating implementation of national economic policy for the development of this region and will establish the natural geographical advantages of the area."

186. The evidence of Mr. A. Phillips representing the North Western Ontario Development Association supports this view at page 12427, Volume 70.

" It has been stated before the Commission that it is not the function of railway freight rates to offset geographical or other disadvantages of industries or areas. In practice it would appear that the opposite effect sought to offset the natural advantages of North Western Ontario's central position and proximity to the deep waterway. This region seeks only practical recognition of its natural advantages within the rate structure."

187. We refer to the testimony submitted on behalf of the Winnipeg Chamber of Commerce at Page 4571, Volume 31:

" This Chamber believes that any movement of traffic by two different modes of transportation should bear rates reflecting the rate characteristics of each mode of transportation in proportion to its contribution to the total movement and no form or mode of transportation should be so regulated as to deny to the public the benefit of its inherent competitive advantages. We therefore, recommend to the Commission: that any national transportation policy and the regulations therein should be consistent with our free enterprise system and to this extent each mode of transportation should be free to compete for any traffic that is available; it should be permitted to base its prices on its own natural advantages; its rates should be based on its own costs and requirements and not forced to bear any arbitrary relationship to other modes of transportation. . . .

The first inequity which comes to mind and on which this Chamber has made frequent and sustained representations is that of the water portion of the joint through rates from Eastern Canada.

The St. Lawrence Seaway was undertaken and financed by the people of Canada in the expectation, that while there would be some substantial regional advantages, basically, benefits would accrue to the whole economy of the country. Try as we may, we have been unable to find any way in which this benefit can be passed on, or, in fact, any basic reason for the construction of the seaway itself, other than to lower the cost of transportation between the upper lake and the lower river ports.

Over the years, this Chamber has watched with grave concern the gradual elimination of the competition provided by the low rates of water-born package freighters on the Great Lake - St. Lawrence system. From the original position as independent operators whose low rates forced reductions in all-rail rates, there has been a gradual transition to the present status in which, so far as rates are concerned, package freighters have become mere appendages to the railway system."

188. At page 4574. Questioned by the Chairman.

" Your views in this regard were presented more than once, I think to the Board of Transport Commissioners?

The Witness - These have been presented to the Board, sir. The Board is bound by legislation, and in applying to it we suggest that the whole picture be considered by the Board as an administrative body. We suggested a look should be taken at the legislation.

The Chairman - Your idea is there should be some recommendation by this Commission in view of the judgment the Board had.

The Witness - That's right, sir."

189. We refer to the comments of Counsel for the Province of Alberta appearing at page 16164, Volume 95, where he was discussing this matter with the Manitoba witness:

Mr. Frawley - " I have no quarrel with anybody's desire to make competition to be reflected in the making of rates, but if that is all you are endeavouring to do, I certainly have no quarrel."

Recommendation

190. The Province of Manitoba, therefore, recommends:

1. That water carriers be required to apply and show cause for any proposed rate increases and that in such applications, the rates be established on the financial requirements of the water carriers without reference to the rates of other modes of transportation.

2. That the through rate on a shipment carried by more than one type of carrier should reflect the relative rate characteristics of each type of carrier to the extent that each has participated in that movement.

As stated by the Premier of Manitoba during his testimony before this Commission in February, 1960, and as restated by the Province of Manitoba at page 15747, Volume 92:

" These recommendations will make possible the realization of national economic policy in regard to the movement of goods by water on the Great Lakes waterway system, particularly in its effect on the economy of Manitoba and that of the other prairie provinces. "

CHAPTER 4

DISCRIMINATION UNDER THE LONG AND SHORT HAUL CLAUSE

"One of the matters which received very careful consideration in the Western Rates Case, and an underlying principle applying to tariffs, is the right of distributing points or manufacturing centres to the advantages of their geographical situation which should not be taken from them by any artificial or discriminatory rates." (43)

191. Transcontinental rates are competitive rates but unlike most other competitive rates, their application is limited from or to a large area in Eastern Canada and to or from the port areas surrounding the Pacific Coast ports. What historically began as a carrier competitive solution has now turned out to be a market and product competitive device. Rates on transportation of products from the eastern region to Vancouver and from Vancouver to Eastern Canada are now granted by the railways with the purpose of permitting those products to compete in the particular area. It is our submission that the denial of similar rates from intermediate points which would reflect the shorter haul has the effect of allowing the railways to determine which area will be permitted to compete in a certain market. This situation is of particular importance at this time, when the economy of the Prairie Provinces and Manitoba in particular, is becoming more diversified with a marked increase in manufacturing capacity and potential. Materials must be brought into the area, processed and reshipped to the eastern or western markets. Rate relationships under the present policy are distorted and, we submit, should be adjusted if the various regions in Canada are to have an equal opportunity to develop.

192. During the hearings of the Commission in Winnipeg, Premier Roblin submitted tables comparing transcontinental rates on certain commodities from Winnipeg to Vancouver as compared to rates from points in Eastern Canada to Vancouver, and from Winnipeg to Toronto and Eastern points as compared to rates from Vancouver to Toronto and Eastern points. These schedules are reproduced here for ease of reference.

COMPARISON OF MANITOBA RATES WITH TRANS-CONTINENTAL RATES

| <u>COMMODITY</u> | <u>FROM</u> | <u>To Vancouver</u> | | |
|-----------------------------|---------------|--------------------------------|-------------------------------|-----------------------------------|
| | | <u>RATE</u> \$ per 100 lbs. | <u>MINIMUM WEIGHT</u> Lbs. | <u>TARIFF</u> <u>AUTHORITY</u> |
| Anti Freeze | ex Winnipeg | 3.34 | 30,000 | W1000-CFC9320 |
| | ex Toronto | 2.10 | 60,000 | A.C. 113 |
| Cement Pipe | ex Winnipeg | 2.45 | 40,000 | W1000-CFC29980 |
| | ex Port Union | 1.26 | 70,000 | A.C. 77 |
| Cement Pipe (Sewer) | ex Winnipeg | 2.01 | 30,000 | W1000-CFC30125 |
| Paper and Paper Articles | ex Winnipeg | 7.44 | AQ | W1000-CFC29580 |
| | ex Toronto | 3.33 | 50,000 | A.C. 440 |
| Furniture | ex Winnipeg | 4.09 | 14,000 | W1000-CFC16105 |
| | ex Montreal | 2.34 | 30,000 | A.C. 690 |
| Canned goods | ex Winnipeg | 1.95 | 60,000 | W 950 - 2710 |
| | ex Toronto | 1.80 | 60,000 | A.C. 87 |
| Wire Rope | ex Winnipeg | 3.34 | 30,000 | W1000-6455 |
| | ex Toronto | 1.40 | 100,000 | A.C. 131 |
| Frozen Foods | ex Winnipeg | 4.09 | 24,000 | W1000-CFC14470 |
| | ex Toronto | 3.50 | 34,000 | A.C. 139 |

COMPARISON OF MANITOBA RATES WITH TRANS-CONTINENTAL RATES

To Eastern Canada, Toronto, except as noted.

| <u>COMMODITY</u> | <u>FROM</u> | <u>RATE</u> \$ per 100 lbs. | <u>MINIMUM WEIGHT</u> lbs. | <u>TARIFF</u> <u>AUTHORITY</u> |
|------------------|------------------------|--------------------------------|-------------------------------|-----------------------------------|
| Fish | ex Winnipeg | 4.09 | 24,000 | 4G-CFC 14405 |
| | ex B. C. | 3.00 | 60,000 | A.C. 495 |
| (Frozen Fish | ex Winnipeg | 4.09 | 24,000 | 4G-CFC 14405 |
| (Canned Fish | ex B.C. | 2.00 | 60,000 | A.C. 59 |
| Wire Rope | ex Winnipeg | 3.34 | 30,000 | 4G-CFC 6455 |
| | ex B.C. | 1.40 | 100,000 | A.C. 264 |
| Tissue | ex Winnipeg | 4.09 | 30,000 | CFC 29060 |
| | ex B.C. to Crabtree | 2.77 | 40,000 | A.C. 379 |
| Canned Goods | ex Winnipeg | 2.03 | 50,000 | 1035 - 530 |
| | ex B.C. | 2.00 | 60,000 | A.C. 156 |

193. Subsequently in the presentation of the more detailed submission in Ottawa, the witnesses on behalf of the Province of Manitoba presented a detailed statement concerning this matter of long and short haul discrimination and the inequity resulting therefrom.

194. We refer to page 15666, Volume 92:

"Sections 317 to 324 inclusive of the Railway Act carry the general heading of 'Equality as to Tolls and Facilities.' Section 317, subsection (5), commonly referred to as the long and short haul clause reads as follows:

'The Board shall not approve or allow any toll that for the like description of goods, or for passengers carried under substantially similar circumstances and conditions in the same direction over the same line or route is greater for a shorter than for a longer distance, within such shorter distance is included, unless the Board is satisfied that, owing to the competition, it is expedient to allow such toll.' "

Application of Long and Short Haul Section

195. The railways as any well operated business must meet competition where it exists. If they should allow competition on some to unduly depress rates on other traffic where the competition is not as pervasive, they would be failing to protect the legitimate interests of their investors. In other words, if the railways due to competition brought about by the existence of a pipeline, reduce the rate on the shipment of oil between Regina and Winnipeg they would not be acting in the best interests of their investors if they reduce the rate on another commodity such as bricks where the same competitive factors did not exist. The legislative provision quoted above was made by Parliament to protect these legitimate interests of the railway investors.
196. The long and short haul clause provides briefly that rates to or from an intermediate point may not be greater than the rates to or from a more distant point unless the rates to or from the more distant point are reduced to meet competition. When two carriers follow closely parallel routes the competition is pervasive at all stations along the route and the long and short haul clause is not applicable. This statement is illustrated by Table 6 which appears in the Transcript at pages 15672 and 15673.
197. On the other hand, when one carrier has a direct route between two points and another carrier starting from the same point of origin has a longer, more devious route to the same destination, problems do occur. Assuming that both railways use the same mileage scale,

the first railway would have a lower rate to the final destination than the second because of the shorter mileage. The second railway will obtain no business to that point of destination unless it is willing to ignore its own mileage and reduce its rate to that of its competitor. However, an intermediate point on the second railway which does not have the same pervasive competitive situation, now finds that its rates are higher than on traffic which moves beyond. This situation is illustrated by Exhibit 153-H.

198. We also refer the Commission to Table 7 appearing at pages 15678 and 15679, Volume 92. Reference was made in this exhibit to the mileages from Vancouver to Edmonton or Calgary on the two lines of the Canadian Pacific and Canadian National Railways. The exhibit shows a variance in rates with Calgary which is 900 miles on the Canadian National from Vancouver taking a 630 mile rate, while Hubalta 7 miles closer to Vancouver takes its actual mileage of 967 miles. The table and the exhibit were submitted to illustrate the variation between actual mileage and rate making mileage due to competitive factors. The Railway Act specifically permits this anomaly because of the competitive forces that result in the lower rate to the more distant point, which forces do not exist with respect to the intermediate point. Where different modes of transportation exist, each being restricted to its particular field of operation, for example water carriers as opposed to rail or truck carriers, situations where the exceptions to the long and short haul clause may be justified will occur more frequently

and to a greater degree. These exceptions to the long and short haul clause are particularly prevalent in the Canadian freight rate structure in transcontinental rates.

199. These rates were based originally on inter-coastal competition via the Panama Canal. This competition is reflected in the rail rates to Pacific Coast ports by United States transcontinental railroads. The low rates on the American railroads have had a depressing effect on Canadian transcontinental rail rates. Unless the Canadian railways lower their rates to the same level as that existing in the United States, the Canadian shipper would ship his goods into the United States taking advantage of the lower United States rates, and then move the commodities back into Canada. While the actual movement of commodities from Montreal to Vancouver via the Panama Canal may be negligible, the effect of the very real competitive situation in the United States brought about by the existence of the Panama Canal and the resulting reduction in United States transcontinental rail rates compels Canadian railways to reduce their rates if they wish to participate in the traffic.
200. There is another factor which has become more important in the past few years, and certainly more important since the consideration of this matter by the Turgeon Royal Commission in 1949, and that is the growing importance of foreign competition at coast ports. The increment in the ocean rate from, for example, Europe to Vancouver as compared with the ocean rate from Europe to Montreal

is only a small fraction of the normal Montreal-Vancouver rate by rail. The Canadian railways, therefore, must also meet this potential, and in many cases actual, competition by water transportation.

201. The railways have not been required by law nor have they felt compelled by equity to grant a rate to an intermediate point comparable to the transcontinental rate because in their opinion the same pervasive forces do not exist for instituting the lower rates to the intermediate point.
202. Shippers have never reconciled themselves to the apparent discrimination of being assessed higher rates on their traffic while at the same time watching identical traffic go by their very door, travelling as much as an additional one thousand miles, at substantially lower rates. The Turgeon Commission attempted to reconcile this complex problem by the institution of what has become known as the "One and One-Third Rule". The effect of the subsequent legislative amendments have been largely negated by the introduction of agreed charges which are not subject to the One and One-Third Rule.

203. The Problem Defined

The Province of Manitoba takes the position that what is necessary is a policy which reflects both the interests of shippers at these intermediate points with emphasis on the protection of their opportunity to compete in a particular market while at the same time permitting the railways to meet existing and potential

competition without serious impairment of revenues. Any policy that aims at equity must reflect both of these real and important interests.

204. It is difficult, if not impossible, to clearly and specifically define what is a competitive rate. We have the situation where a competitive rate is introduced not to meet a carrier competitive situation but to meet a market competitive situation. For example, a rate may be granted to an eastern manufacturer in order to enable him to meet foreign product competition in the Vancouver market.
205. A competitive rate might also be published by one carrier to assist the shippers located on that carrier's line to compete more effectively in a common market served by other railways or other carriers. Illustrative of this last situation would be the "hold-downs" as exceptions to the horizontal increases in the United States.
206. Another device would be where a single rate is applied to several shippers on a single railway which would enable each of the shippers to compete equally in a given market although the mileage as between shippers may vary. An example of this latter situation is the so-called "A and B" rate groups in Eastern Canada. It is interesting to note in this connection that the rates from the A and B groups to Western Canada are not published as competitive rates although they clearly have been maintained as a competitive device.
207. Another situation might be termed product competitive where the shipper is able to substitute one article for another. The railways

in this situation might be required to reduce the rate on a particular commodity in order to encourage shipments into the region where the other product is available locally. This matter was discussed during the presentation of the Brief on behalf of the British Columbia Red Cedar Shingle group who are faced by the competition from asphalt shingles as a substitute product in the Central Canadian market.

Traffic To and From Intermediate Points Must Be Distinguished

208. The Province of Manitoba emphasizes the fact that in the consideration of any solution to this matter, clear distinction must be made between traffic to an intermediate point and traffic from an intermediate point. As long as the rate to an intermediate point is reasonable of itself, that is, the rate to the intermediate point is not unreasonable or unfair under the present provisions of the Railway Act and the lower rate to the more distant point is necessary and compensatory, it is difficult to see how the receiver at the intermediate point is injured by the lower rate to the more distant point. It is our submission that the shipper at the intermediate point is helped by the exception to the long and short haul clause since the contribution to net revenue made by the lower rate to the more distant point reduces the overhead costs that would otherwise have to be borne by the traffic at the intermediate point if the longer haul traffic were lost to the carrier. This situation is illustrated at pages 15697 to 15700 inclusive in Volume 92.

209. At page 15702 the following appears:

" Mr. Mauro - Q. You have described the impact where traffic moves to the intermediate points. What are the impacts where the traffic moves from an intermediate point?

Mr. Stechishin - On the other hand, where the traffic moves from an intermediate point the same factors produce sharply contrasting results."

210. At page 15704:

" Under the situation where traffic moves to intermediate points where competition is not compelling, reduction in the intermediate rates has the most adverse effect on rail revenues, while a reduction in the longer haul has the most beneficial effects. Under the situation where traffic moves from intermediate points the exact opposite is true. The railways stand to gain most by reducing the rate from the intermediate point and gain least by reducing the rate for the longer haul.

This situation prevails despite the fact that competition may exist only between Toronto and Vancouver and not between Winnipeg and Vancouver.

The long and short haul clause makes no distinction between traffic to intermediate points and traffic from intermediate points. It is our submission that the railway should, wherever possible, meet competition in such a manner as to minimize their losses and that this can be best achieved by allowing the various competing industries to enter a common existing or potential market on an equitable basis. Competitive rates, in the railways' best interests should not be merely confined to between the points where the competition operates but rather to the common market or markets from the various producing points."

211. The witness for the Province of Manitoba was cross-examined on this subject by Counsel for the Canadian Pacific Railway. The questions and answers point up the inequity and the weakness in the present railway pricing policies. At page 16284:

" Q. Now, Mr. Stechishin, I want to take you back to the place where the rate is fixed by carrier competition, and I suggest to you that if your proposal became effective the railways would then in all likelihood have to have another direction saying that internal market competition is to be recognized by carriers in fixing rates? ...

A. When a competitive rate is published from a more distant point, the intermediate points, in our case Manitoba, should be given a rate reflecting a shorter haul to the same destination, that is a rate reflecting its geographic location.

Q. And the only justification for that would be market competition?

A. The primary justification for it, in our estimation, is that it would maximize the railways' net revenue, which seems to be a major problem before this Commission.

Q. ... Are you suggesting that it should be a fundamental principle of railway freight rate structure that the railways have no obligation to shippers; that their only obligation is to maximize the net revenue in every case? Is that the position of Manitoba?

A. Not solely. It is a combination of both. I'm not suggesting that you give this intermediate rate to only Manitoba. I say once the competitive situation arises it then has to be extended to all intermediate points, and by so doing you maximize your net revenues, and you benefit the shippers.

Commissioner Gobeil: Mr. Stechishin, I am not clear on this two dollar business that Mr. Sinclair brought up. There would be two dollars from Montreal into Vancouver on account of competition, but you say if Winnipeg got the same rate the railways would make more money - that is, if they got the same rate from Winnipeg to Vancouver?

A. Absolutely. They are moving the goods half a distance, and they are getting the same money. They would certainly make more net profit than they would on a movement from Montreal to Vancouver.

Chairman: Is there traffic there to move?

A. If the traffic moves.

Mr. Chairman: I can't understand why it should be Montreal instead of Winnipeg?

Mr. Mauro: Neither can we.

Mr. Sinclair: Let me put it this way, Mr. Stechishin, your sole concern in this proposal is to help the railway increase their net revenue?

A. It is not my sole concern. I said there was a dual interest here - that of the shipper and that of the carrier. ...

Q. Do you think the railways by not applying these rates from intermediate points are not acting in their best interests?

A. That is my position, yes."

Gross Revenue Versus Net Revenue

212. Counsel for the Canadian Pacific and the witness for the Province of Manitoba discussed the statement made by the Province of Manitoba that all too often in actual practice the railways' primary concern is with gross revenues as opposed to net revenues. Counsel for the Canadian Pacific took extreme exception to this and suggested that it was without foundation.

213. We refer to the statements of Mr. N. R. Crump, President of the Canadian Pacific Railway, speaking before the annual meeting of the Delta Nu Alpha Transportation Fraternity in Pittsburgh, Pennsylvania on October 31, 1959.

"Consequently railway management has been less successful than the managers of other businesses in delegating responsibility for net earnings to the heads of departments and in measuring success by performance in terms of net. This has become a serious disability now that transportation is highly competitive and the opportunities to cover the losses in one service by large profits in another are rapidly disappearing."

214. We would also refer to the statement by Dr. O. M. Solandt, Vice President, Canadian National Railways, to the Trade and Industry Council at Winnipeg on September 26, 1960:

" Those who made railway freight rates then tended to concentrate on gross revenue and consequently, they were inclined to charge high rates to traffic that they knew would move in spite of high rates and to charge very low rates in order to encourage the development of marginal industries. In the early days of railway monopoly, the railway ratemaker really played god in the economic sphere. He could, with a simple twist of the tariff, determine the location of industries and decide which resources would be developed and which would be left untouched. "

215. While Counsel for the Canadian Pacific Railway is apparently unaware of this serious problem in railroad pricing policies, the President of the Canadian Pacific Railway and a Vice-President of the Canadian National Railway are fully aware of the situation and corroborate the statements of the Province of Manitoba that in these matters of long standing competitive pricing policies we must take a closer look at those rate-making decisions that would result in maximizing rail net revenues. We refer to the cross-examination of Mr. Stechishin conducted by Counsel for the Canadian Pacific Railway commencing at page 16300, Volume 96:

" Q. I am asking you how the revenues of the railway would be enhanced by reflecting fictitious competition on the movement from Swift Current to Winnipeg?

A. I do not think the railways' revenues are ever enhanced by reflecting fictitious competition, Mr. Sinclair. I am speaking of real competition. I am assuming that the competition does exist.

Commissioner Mann - Or that it might be potential?

A. Well, that would be a form of competition. I think potential competition is real."

216. Counsel for the Canadian Pacific then dealt with Exhibit 153, Appendix 2 of the Manitoba submission which contained a number of examples of commodities moving at rates from Toronto to Vancouver lower than rates on similar commodities moving from Winnipeg to Vancouver. At page 16301:

" Mr. Sinclair: Well, these are the goods that he (Stechishin) would think would be of advantage to the railways' net revenue, if his principle was adopted. ...

Mr. Stechishin: Well, I think I will have to ask the railways why they reduced that rate on paper we referred to yesterday from \$7.44 to \$1.85, unless they felt it would enhance their revenue position.

Mr. Sinclair: It is not my purpose here to answer questions, it is my purpose to assist the Commission by asking questions.

Mr. Mauro: Mr. Stechishin is also trying to assist the Commission. ...

Mr. Sinclair: I will tell you, Mr. Stechishin, just so that you won't be at all disturbed it was a competitive situation that had existed and had nothing to do with the market competition at Vancouver.

Mr. Stechishin: Well, I am rather amazed that a Winnipeg man could compete at the rate of \$7.44 against an Eastern man at \$3.33 in the Vancouver market.

Q. I said it was a competitive situation that did exist.

A. That you chose not to reflect in the rate structure until March of this year.

Q. That may have been when the railways felt that they had established the need to enhance their revenues by the rate adjustment that was involved. . . "

217. This last statement illustrates the attitude of counsel for the Canadian Pacific Railway in approaching this very serious problem. It does not agree with the statements made by Mr. C. Edsforth, Vice-President, on this matter of internal market competition, which we refer to subsequently.

Discussion of Manitoba Proposal

218. As to the suggestion that the Manitoba proposal would require numerous additional tariff publications, the witness, at page 16305 stated:

" Mr. Sinclair: I am talking of Winnipeg, not the rest of Manitoba.

Mr. Stechishin: Mr. Sinclair, we are talking here about a principle. It does not matter whether it would be Winnipeg, Portage la Prairie or anywhere else in Western Canada. I use this as an illustration of principle.

Q. In respect of whether goods move or not, you want to have the railways directed to publish rates notwithstanding the fact that they may not move from Winnipeg but may move from somewhere else in Western Canada?

A. I am asking that a certain principle be accepted and these rates be available to the shipper. I am not asking them to publish numerous rates, but I want a shipper to have a guarantee, a shipper who is thinking of opening up there - to have a guarantee that that rate will be available to him when he opens up business."

219. It should be abundantly clear to the Commission that the position of the Province of Manitoba on this matter is not a parochial one. There is no suggestion in our recommendation that these rates reflecting the geographic advantage of intermediate points in shipments from those points to a given market should be restricted to

Winnipeg or the Province of Manitoba. It is our position that rates from Regina to Vancouver should be lower than rates from Winnipeg to Vancouver. Similarly, rates from Calgary to Vancouver should be lower than rates from Regina to Vancouver, and moving in an Easterly direction one would expect that rates from Regina to Toronto should be lower than rates from Calgary to Toronto, and that rates from Winnipeg to Toronto should be lower than rates from Regina to Toronto.

220. This matter was touched upon by Commissioner Platt in his examination of Dr. H. Harries where he used the example of a plant in Hamilton shipping into the Edmonton market and a plant starting up in Calgary making the same articles and also selling into the Edmonton market. In his rebuttal testimony Mr. Edsforth was examined on this matter by Counsel for the Canadian Pacific at page 18140, Volume 109.

" Q. ... Let us say the movement from Calgary to Edmonton was a carrier truck, the movement from Calgary to Edmonton was by truck and the movement from Hamilton to Edmonton was by rail, what about that situation?

A. That would be a case where perhaps two producers were supplying the same article in Edmonton, perhaps both shipping originally by rail and the Calgary producer got a much lower rate by motor truck and the rails did not get any of the traffic from Calgary. In that case I think the railways would and should put in an agreed charge or competitive rate or whatever is needed on a basis sufficient to maintain the competitive position of the Hamilton producer."

221. This is the identical situation which the Manitoba proposal contemplates. In our proposal, you have two manufacturers, one in Toronto

and one in Winnipeg, both shipping into the Vancouver market and as in Mr. Edsforth's statement both were shipping originally by rail. Competition by another carrier manifests itself affecting the Toronto to Vancouver movement, and the railways introduce a rate to maintain the movement from Toronto. Applying the clear statement of principle advanced by Mr. Edsforth, we submit that the railway "would and should put in an agreed charge or competitive rate or whatever is needed on a basis sufficient to maintain the competitive position of the other producer."

222. With reference to Manitoba's position that in introducing these rates from an intermediate point, relative rate relationships should be maintained, we would direct the Commission's attention to Mr. Edsforth's examination by Commissioner Mann appearing at page 19622 in Volume 118:

" Q. You do this to maintain the differential in dollars and cents between the two producers?

A. Yes that might be one way. I do not say that it is exactly the way.

Q. That would be the goal that you would have in mind?

A. Yes."

223. Our position in this matter is further illustrated by the discussion between Commissioner Platt and Mr. Edsforth appearing at page 19636, Volume 118, where Commissioner Platt points up an example where a manufacturer in Calgary supplies his own trucks and decides to ship his commodities into the Edmonton market. He asks:

" Q. Does that make any difference to the rail rates from Hamilton to Edmonton?

A. It might well, Mr. Commissioner Platt, yes; that is to say if you were handling your own goods from Calgary to Edmonton which perhaps had not formerly been moving by the rail, yes, I think that could be a reason for us making an adjustment in the rate from Hamilton. It would not necessarily follow, but it would give us a reason for doing it.

Mr. Frawley: And what would you call that?

A. That is meeting carrier competition. Carrier competition is private carriage."

224. The question here is, if in addition to the railway carrying commodities from Hamilton to Edmonton, they were also carrying similar commodities from Winnipeg to Edmonton, would a similar rate reflecting Winnipeg's geographic location be granted the Winnipeg shipper? In the above illustration it would follow that the railways should grant a Winnipeg manufacturer the same rate basis as that granted to the Hamilton manufacturer. The same principle can be applied in the situation where a Winnipeg manufacturer ships from Winnipeg to Vancouver as compared to the Toronto manufacturer shipping from Toronto to Vancouver.

225. In light of the foregoing testimony, the opposition of the Canadian Pacific Railway to the Manitoba proposal is difficult to understand. The apparent objection that the Canadian Pacific Railway has to the Manitoba proposal is that competition has not manifested itself from Winnipeg to Vancouver to the same degree or in the same form as it has manifested itself from Toronto to Vancouver. Yet in the illustration so aptly chosen by Commissioner Platt there is

no competitive situation from Hamilton to Edmonton. The competitive situation exists from Calgary to Edmonton and following the logic of Mr. Sinclair's position, we could understand that the railways might put in a competitive rate from Calgary to Edmonton. The introduction of a competitive rate from Hamilton to Edmonton can be on no other basis than to permit one manufacturer (Hamilton) to compete in a given market (Edmonton) with a manufacturer in another area (Calgary). In this example competition only exists between Calgary and Edmonton yet a rate is introduced to permit the Hamilton manufacturer to deal in the Edmonton market. We submit that this is identical to the proposal of the Province of Manitoba. Where competition exists only from Toronto into the Vancouver market, the same pervasive forces affect the Winnipeg shipper into the Vancouver market. Therefore a rate should be introduced from Winnipeg to Vancouver or from any intermediate point into the same market that would permit all manufacturers to trade into that market.

226. Support of Manitoba Proposal

We refer the Commission to the testimony of Mr. A. Hart, Vice-President, Canadian National Railways, who takes an opposite position to that adopted by Mr. Sinclair, Counsel for the Canadian Pacific, and more in line with that of Mr. Edsforth, Vice-President, Traffic, Canadian Pacific.

227. At page 19803, Volume 120, Manitoba's recommendations in regard to the long and short haul clause were discussed with Mr. Hart:

" A. Just at the moment, Mr. Mauro, we are examining very carefully this proposal and I'll say frankly, to me, it appears a reasonable one. I say that against the background, I believe it is our job to maximize the net (revenue) of our railway. And if your proposition does this, as it appears on the surface to me so to do, we would be generally in favor of the theory put forward, if not perhaps in exactly the same words.

Q. You and I can agree that the basis of the Manitoba proposal was that in addition to being more equitable, in our opinion, it did tend to maximize net revenue?

A. Yes, that is what you said, and this is what we are examining."

228. In addition to these statements by experienced traffic officers of both railways, the problem was also discussed with Dr. Ernest Williams, a recognized authority in the field of transportation economics. At page 17187, Volume 103:

" A. It seems to me, though, that from the point of view of economics, it is a rule that could appropriately be extended to the kind of case you just mentioned (market competitive), because if you do not use it, then, what you are saying in effect is that to permit the carrier to meet the competition from one point but not from others, having, as I think your condition stated, competitive producers of the same commodity or commodities attempting to reach the same market, and one indeed closer than the other, to whom the competitive rate was extended, that we have here a good economic argument for saying that if we desire to avoid affecting simply out of what might be called somewhat arbitrary treatment of the rates by the carrier the respective opportunities for those two producing centers to develop, then we must apply that kind of rule.

Q. I would expect that the governing principle is, as you have suggested, at 17008 where my Learned Friend Mr. Cumming said - "And I suppose the propriety of it would be measured by the extent to which the railway could maximize its net revenue position?" Would that be your opinion?

A. Yes, in this somewhat broadened context as compared with the earlier exchange would mean to me to maximize the revenue, the entire traffic from all sources that would meet the external competition in the coastal market."

229. The present policy regarding long and short haul discrimination from intermediate points is clearly inequitable.

Recommendations

230. The Province of Manitoba recommends:

1. That the railways should not be permitted to select the centers which will be allowed to compete in a given market.
2. When a competitive rate is published from a more distant point, the intermediate point, should be given a rate reflecting its shorter haul to the same destination, that is, a rate reflecting its geographic location.
3. Normal relations between shipping points to a given market should be generally maintained. In other words, the rate from Winnipeg to Vancouver should be lower than the rate from Toronto to Vancouver on the same commodity and similarly the rate from Winnipeg to Toronto should be lower than the rate from Vancouver to Toronto on a given commodity.

CHAPTER 5INTER-LINE RATES

231. Rail rates, in the absence of competitive influences, normally reflect mileages either between their respective stations or between the key points. There are, however, some exceptions. The exceptions occur when the traffic must move of necessity partly over the lines of one railway and partly over the lines of another. In these circumstances, the rate charged is not based on the total mileage but on the sum of the rates to and from the inter-change point. A token deduction is made from the sum of these rates but it is too small in proportion to the added cost to be of any solace to the shipper.
232. Under the Class 100 scale, a shipment in Western Canada moving 50 miles over the lines of one railway to a junction point and then 50 miles over the lines of another railway to destination would be rated at the sum of the two 50 mile hauls less the token deduction referred to. If, on the other hand, the shipment moved 100 miles over the lines of a single railway, the rate would be considerably less. It is also important to note that this extra charge for inter-change is not assessed when two railways can combine to reach a point served by a direct line of a third railway.
233. This subject was dealt with in detail in the Province of Manitoba's submission in Ottawa and is found at pages 15627 et sequa, Volume 91. The Province of Manitoba submitted Exhibit 153-F to illustrate the situation where various railways having different mileages have a common point of destination. The exhibit dealt with a shipper in Hamilton with destination in the City of Winnipeg. The exhibit

points up that there are 141 different all-rail routes open to the Hamilton shipper. No matter which one of these routes the shipper elected and no matter how many inter-changes were required to move the commodity from one railway to another, the rate at Winnipeg would be identical for every one of the 141 different routes available.

The Situation In Western Canada

234. Mr. Stechishin explained some of the background to the present situation commencing at page 15633:

" While Canada at one time did have a number of major railways competing for traffic, all but the Canadian Pacific Railway have been combined into one system, presumably for efficiency and to reduce operating costs. Since the Canadian National System was formed in 1923, rate and routing arrangements which were in force between the components of that railway and the Canadian Pacific gradually have become more restricted, particularly in Western Canada. The Government of Manitoba has no desire to see any railway short haul itself, but it feels that this problem of inter-line routing is largely a matter to be settled between the railways themselves and should in no way be reflected as an additional cost in individual rates."

235. The consolidation of lines which was designed to reduce relative operating costs has not led, however, to lower rates but has resulted, in fact, in increases in certain instances. All rates in Western Canada with a few exceptions are based on through mileage over the line of one railway if that railway serves both origin and destination. Where the origin and destination are on different railways, the through rate is constructed by adding the local rates to and from an officially recognized inter-change point. An officially recognized interchange point and a junction point are not necessarily the same. The witness,

on behalf of the Province of Manitoba, submitted Table 5 at page 15636, Volume 91, comprising a list of competitive stations in Western Canada. This table lists all junction points in Western Canada and indicates which are official interchanges.

236. Although in Western Canada there are 138 common junction points, only 42 are designated as official interchanges between the two railways. It is important in this connection to note that the fact that both railways reach a point or even serve a common junction point does not give the shipper the right to construct his combination rate on that junction point unless the railways choose to designate that point as an official interchange. In the case of Western Canada, therefore, although the tariffs indicate 138 common junction points to both railways, the shipper can only construct his combination rates over the 42 official interchanges recognized and listed by the railways as official interchange points. When the railways fail to provide an official interchange at a point where a physical interchange is possible the shipper is compelled to compute his mileage over some other point which has been so designated. In many cases this involves additional mileage with resultant higher rates to the shipper in question.

Comparison Between Eastern and Western Canada

237. At page 15650, Volume 92:

"Q. You have described the situation with regards to inter-line rates in Western Canada. What is the situation in Eastern Canada?

A. ... Within Eastern Canada a different situation exists. When the Canadian National System was formed, shippers had been able to resist efforts of the railways to restrict routing in such a way that would have resulted in higher rates. When the class rate equalization order was issued in 1955, the railways regarded this as an opportunity to remove those joint routes and rates which they had inherited within Eastern Canada at the time of the amalgamation. However, shipper reaction was such that within a very short time the Canadian railways published a tariff in which the calculation of through rates from stations on one railway to stations on the other railway was restored to the basis of the through mileage, and not on the sum of local rates. This tariff is only applicable between specified stations in Eastern Canada. The railways have been requested to publish a similar tariff in Western Canada. This they have consistently refused to do."

238. We refer to the submission of the Maritime Lumber Bureau at page 337, Volume 3:

"Another problem facing some of our members in the Province of Nova Scotia is the absence of through rates, on lumber from stations on the Dominion Atlantic Railway to markets in Eastern Canada. The additional freight handicap for those who are shipping from these D.A.R. points to Montreal as compared to shippers located equidistant from Montreal on the C.N.R. is evident from Table "D" hereto annexed. It is submitted this is a matter that requires correction by the publication of joint through rates."

239. The submission of the New Brunswick Potato Shippers Association, appearing at page 461, Volume 4 states:

"To note an existing unfair charge in rail transportation according to the local freight charges, reference is here made to the fact that there is not in existence "a through rate" between the two railway systems. This means that in cases where a shipper cannot ship his potatoes to their destination on one railway system, he must, in addition to the local established rate, pay a charge to the necessary dovetailing railway company for this connecting service. It is strongly urged that such a "through rate" be established."

240. The New Brunswick Seed Growers Co-operative Limited, at page 475, Volume 4, states:

"We have thus been forced to develop our Maritime market for seed grain. In our efforts to develop this market it has become apparent to us that the prevailing freight rate structure on the movement of seed grain within the Maritimes is not favorable when two or more railways are involved in the haul from origin to destination.

As previously mentioned, our plant is situated at Hartland, New Brunswick. Hartland is a point served exclusively by the Canadian Pacific Railway. The closest connection with the Canadian National Railway is at Woodstock, N.B., a rail distance of 13 miles from Hartland. Since the preponderance of our rail shipments are made to points in New Brunswick and Nova Scotia not served by Canadian Pacific Railway, we are forced to use either two or three railway lines in order to reach our customers. In other words, a shipment of seed grain to an account in Sydney, Nova Scotia, travels only 13 miles on Canadian Pacific lines to Woodstock, N.B., where it is given to Canadian National for the haul of 541 miles over the lines of that railway to destination.

...Because of the way in which the rates for these multiple line hauls are constructed, this situation has adverse effects on our organization. The total rates on shipments made from Hartland to points on Canadian National and Dominion Atlantic Railways is made up of the sum of local rates of each participating railway, except that each railway deducts 1¢ per 100 lbs. in recognition of the fact that its haul is only part of the total haul.

We submit that the reduction of only 1¢ from the local rate of each participating railway is an entirely inadequate recognition of the fact that each such railway performs only a part of what is essentially a through movement.

It is our respectful submission that the rate over more than one railway should be made as if the shipment moved over only one line for the distance involved."

241. The Manitoba proposal was also supported by the Hudson Bay Route Association.

The Principle Underlying Manitoba Proposal

242. The Province of Manitoba submits that a shipper should not be compelled to pay for more transportation service than he requires for the movement of his commodities. Where the railways move traffic over a mileage other than the shortest rail mileage between origin and destination, this decision is dictated by railway convenience and is in no way required by the shipper. Any excess mileage so resulting should not be reflected in the rates charged to the particular shipper. This matter was discussed with Mr. Edsforth at page 19567, Volume 118, where the problem of the Heatburg shipper, who is intermediate to Edmonton and Calgary, was set forth. We pointed up the fact that the Canadian National Railway, in attempting to hold Calgary business from Vancouver, quotes a rate to Calgary based on the Canadian Pacific Railway mileage although the movement of the commodities is from Vancouver via Edmonton to Calgary. We suggested that similarly the Heatburg shipper, who is situated intermediate between Calgary and Edmonton, should obtain the benefit of the short line mileage, namely the Canadian Pacific Railway mileage from Vancouver to Calgary, even though the commodities might move via Edmonton. The purpose of this discussion was to discount the first allegation of the Canadian Pacific Railway that the Manitoba proposal would compel a railway to short haul itself.

"Q. The Canadian National Railway takes this traffic from Vancouver to Edmonton and Edmonton to Calgary, while giving the shorter 350 mile run, in order that it will not short haul itself and in order that it receives or maximizes its revenue?

A. That is right.

Q. If the rate from Vancouver to Heatburg were based on the shortline mileage via Calgary, there is still no reason why the Canadian National Railway should short haul itself since Heatburg is intermediate to Calgary on the Canadian National?

A. That is right. It does not have to short haul itself, but it does under your proposal have to apply a lower rate that is attributable to the mileage that moves the traffic.

Q. The shipper in Heatburg does not require any more railway service, Mr. Edsforth, than that represented by the mileage from Vancouver to Calgary, plus the mileage from Calgary to Heatburg. That is all the transportation service he requires. He can get his commodities by the Canadian National Railways taking it the way it is now, taking the material to Calgary via Edmonton; the present method of the Canadian National is via Edmonton and from Edmonton to Calgary. The Heatburg shipper never requires any additional transportation service?

A. Additional transportation service? From whom, may I ask?

Q. From ... take the Canadian National, since he is intermediate, to Calgary on Canadian National?

A. What you say is he does not require any more transportation service to Heatburg than the fellow going to Calgary.

Q. Yes.

A. That is so. That of course, is so. Quite right."

243. To point up the basic principle of equity which underlies the Manitoba proposal, we discussed with the witness , at page 16571, the relationship of the shipper from Pine Falls to Edmonton as compared to the shipper from Vancouver to Heatburg. In the case of the Pine Falls shipper there is no other means of rail transportation except via Canadian National. This is not the case, however, with the Heatburg

shipper who has available the Canadian Pacific Railway short line mileage -- Vancouver to Calgary and then via Canadian National Railway to Heatburg.

" Q. And you have referred to this situation, and you suggest the result would be inequitable in the view point of the Pine Falls shipper who does not have this opportunity; who is only on one railway?

A. That is right.

Q. I suggest to you that the Manitoba proposal, rather than creating an inequity on the Pine Falls shipper, would remove a present inequity against the Heatburg receiver. In other words, what I am suggesting is that the Heatburg receiver requires only 760 miles of rail service. He is presently being charged for 874 miles of rail, or 114 unnecessary miles. In the case of the Pine Falls shipper, he pays only for the minimum number of miles required to move his commodity from Edmonton. The situation is in no way, with respect, comparable.

A. I do not agree with that at all because the actual movement of the traffic Vancouver to Heatburg and from Pine Falls to Edmonton over the lines of the Canadian National is approximately the same. So the rates should be the same. Now, the mere fact that it could be worked out some route via Calgary to give Heatburg a lower basis does not in my mind make it --

Q. I maintain you do not have to work out any route. The present routing is in existence and is being utilized, and I suggest you are denying nothing in giving -- in adding on this additional mileage that is a result of the need of the shipper in Heatburg, or are you denying anything to the Pine Falls shipper, because he is being charged exactly his minimum mileage to Edmonton?

A. The man is being charged for the distance over which his traffic moves.

Q. That is the Pine Falls man?

A. Yes, the Pine Falls man.

Q. And he could not have it any other way, because there is no other route?

A. That is my point.

Q. That is not the case in Heatburg?

A. Yes, there is only one way that traffic can move Canadian National, and that is via Edmonton or whatever junction they used.

Q. And even though it moved on to Calgary at a 650 mile scale, it is justified, in your consideration, and they should charge the Heatburg shipper who is intermediate to Calgary the 894 miles?

A. Well, Mr. Mauro, yes, that is so, because I feel this very strongly, as I say in my evidence, that if it is from a point of one railway on its own line then the rates should be made on the basis of the mileage over which the traffic moves."

244. The difference between the position of the Province of Manitoba and that of the Canadian Pacific Railway is that the Canadian Pacific takes the stand that the shipper should be charged with every mile that the commodity might move as a result of the railway's choice of moving that traffic. The Province of Manitoba suggests that equity demands that the shipper should be charged only with the mileage that is required to move his particular commodity.

245. The Canadian National Railways in the evidence submitted by the Vice-President, Mr. A. Hart at page 19801, Volume 120, stated that this matter would be examined to ensure more equitable treatment between Eastern and Western Canada.

"Q. Perhaps we can at least agree, Mr. Hart, that the Canadian National Railways would certainly support any scheme, the object of which was to bring about equality of treatment?

- A. As between Eastern and Western Canada, that is a generalization, but I think I would agree with the generalization, yes."

246. Our recommendation is not an attempt to preclude the use of station groups or key points. The railways should continue to be allowed, in fact, they should be encouraged to name one central point in an economic area as the rate basing point and apply that rate to surrounding stations disregarding minor differences in mileage. If this recommendation is implemented it would have the affect of firstly, giving equality of treatment between Eastern and Western Canada and secondly, equality of treatment between those stations which are located on the lines of a single railway and those stations which have had the good fortune to be located on the lines of two or more railways.

Recommendation

247. The Province of Manitoba recommends:

Where freight rates are based on mileage they should be based between all stations in Canada on the shortest through mileage regardless of whether or not it is necessary in the course of movement to transfer the goods from one railway to another.

PART THREE

CHAPTER 6

BURDENS IMPOSED BY LAW OR PUBLIC POLICY

Clause (b) of the Terms of Reference:

"The obligations and limitations imposed upon railways by law for reasons of public policy and what can and should be done to ensure a more equitable distribution of any burden which may be found to result therefrom."

248. We would refer to the evidence of Premier Roblin at page 4242,

Volume 29:

"It is our considered opinion that "burden" in the context of your terms of reference and "burden" in the context of national economic policy is the total burden carried by the shippers situated in the various regions of this country."

249. It is submitted that the burden that this Commission should consider is the total cost to the shipper in Manitoba or elsewhere in Canada on all commodities. We suggest that it is not valid to look simply at one aspect of the shipper's freight bill such as the cost to the farmer in Manitoba of moving grain to export points. We believe that the over-all freight bill must be considered, and, in our illustration, this should include not only the cost to the Manitoba shipper of forwarding his commodities to market but also the costs of bringing in his supplies, equipment and foodstuffs. It is the totality of transportation costs which must be taken into consideration in order to determine whether or not a shipper is carrying a disproportionate share of the over-all burden related to railway freight traffic.

250. In accordance with our interpretation of Clause (b) of the terms of reference, we are confining ourselves to a consideration of those items which are, in fact, most burdensome to the freight shipper.

251. At the commencement of this Commission's hearings in September, 1959, the Province of Manitoba contended that term (b) of the terms of reference is intended to permit a broad examination of the various burdens that exist in the freight rate structure. It was the position of the Province of Manitoba that this Commission was in no way restricted to examining one alleged burden, namely the burden resulting from the movement of grain to export positions. Early in the hearings the Province of Manitoba urged that a complete study be made of the freight rate structure in order to determine any burdens resulting from the operation of law or public policy with a view to alleviating such burdens. The Commission decided against this, but did request the railways to submit the costs of operating passenger train services.

252. It is important to review some of the background to this matter of inequities and burdens and the position that Manitoba has taken from the opening hearings of the Commission. We would refer to the transcript of the Preliminary Organizational meeting held on September 17 and 18, 1959 and particularly the statements appearing at pages 38 to 43 inclusive. A request was made for additional information and the Chairman directed that a conference be held between counsel for the interested parties to determine what information was required and whether or not the railways would be willing

to provide this information. The railways categorically refused. The following day those who had participated in that conference appeared before the Commission at which time a motion was made. We would refer the Commission to page 116 of the Organizational Meeting:

"The Chairman: Did you take a part in this conference?

Mr. Mauro: Yes, I did Mr. Chairman, and I want to reiterate my feeling of concern over a change in the atmosphere that might enter into this Commission's hearings from yesterday. I want to underscore what I said yesterday, Mr. Chairman and Commissioners, on behalf of the Province of Manitoba, that we do approach this Commission's hearings, to repeat the words of the Chairman, with a feeling of co-operation, and with an intent that the results of this Commission will benefit the whole of Canada and not one particular section. We have done some little work in the Province of Manitoba in the preparation, but we felt it would be completely impossible to constructively assist this Commission without fairly detailed information as to this question of burden and the national economic policy."

253. At page 117:

"Now this question of inequities is very real, and this Commission, in seeking to ferret out whether there are inequities, must also submit to the Governor-in-Council its conclusions as to whether there are inequities, and what might be done to alleviate the burden on the shipper. This cannot be done with a look at a limited sphere of freight movement, namely, that of the statutory grain rates. Right now, Sir, in Winnipeg, Edmonton and Saskatoon there is a hearing before the Board of Transport Commissioners concerning the cancellation of a Canadian Pacific Railway passenger service, trains 41 and 42. In the newspaper reports ... of these hearings it appears that witnesses for the Canadian Pacific Railway have testified under oath that the reason they want to abandon this particular passenger line is that it has been losing \$500,000 a year since dieselization and \$750,000 a year prior to dieselization. This, I suggest, is a fairly large amount of money when extended over a period of time, and this is only one segment of a fairly vast passenger service.

We suggest that this Commission will be very interested in

determining the burden of passenger services on the freight shipper."

254. Further, at page 118:

"Mr. Chairman, I want to make that clear, that I was under no misapprehension that this Commission was acceding to the submission of Mr. Sinclair as to the limits of its investigative powers. What I am suggesting, Mr. Chairman, -- and perhaps I may be forgiven for this thought -- is that perhaps the Commission was not aware of what was needed from a procedural standpoint in order to facilitate the work of the Provinces in preparing our case. I am only presenting this evidence for what it is worth to support our contention that there are other fields that might require investigation; that if we are to determine burdens then we must look at the whole freight rate structure ...

If there is some method by which we can safe-guard the secrets of the Canadian Pacific Railway against their competitors, then we will certainly agree to them, but we submit we will be hamstrung in our work before this Commission without that necessary information."

255. On December 4, 1959 the interested parties again urged that the necessary information be provided. Reference was made to the statements of the Province of Manitoba at the Organizational Meeting, and at page 1236, Volume 10:

"The Acting Chairman: Well what you say is that the plural is used here instead of the singular; it is "inequities", rather than "inequity".

That is your argument?

Mr. Mauro: Yes sir."

256. We stated that the Province of Manitoba had done preliminary work in this regard and that it was essential that the spirit which should govern the hearings of this Commission should be a spirit of co-operation and assistance. We submitted that the time had come for a serious re-appraisal of the transportation problems of this country and that if the Provinces representing the shippers concerned joined

hands with the railways in a co-operative re-appraisal some long term solution might be found.

257. Subsequently we had a discussion with Counsel for the railways concerning the data we had requested. On the second day of those hearings the Provinces of Alberta and Manitoba moved that the Commission direct the railways to provide us with the necessary information.

258. At page 1238, Volume 10, a resume of our actions in this regard appears:

"... Mr. Frawley and I went to Washington to consult the gentlemen we hoped to retain to advise us in this matter, and they endorsed completely the fact that we must have additional information if we are to assist this Commission in its deliberations which it is undertaking. As Mr. Frawley said, we subsequently wrote to Mr. Sinclair requesting this information, and we received back a letter saying, in general, that the best thing we could do would be to drop a postcard to the Board of Transport Commissioners. I suggest, Mr. Chairman, so far as the Government of Manitoba is concerned, it stopped sending postcards to the Board of Transport Commissioners last November when we appeared before the Governor-in-Council, because the inequities in the freight rates structure had become so intolerable to various regions of this country -- the Maritimes, particularly and Western Canada -- when we appeared before the Governor-in-Council appealing the decision of the Board of Transport Commissioners in the 17% case. I suggest that as a result of that appeal this Commission was empowered, and the Terms of Reference make it very clear that this Commission was directed to investigate all of the inequities that might exist in the Canadian freight rates structure, and to consider them in the context of the national economic policy, and the role that transportation might play in the furtherance of that national economic policy."

259. It is important to clarify this matter of branch line and passenger services and burdens generally in the terms of reference, because the Canadian Pacific Railway has taken the position before this Commission

that the only burden that exists in the Canadian rate structure is that represented by the statutory rates on export grain. We realize that the Canadian Pacific Railway is not the author of the terms of reference, and that the Commission will not accept their statement as to this interpretation. The terms of reference are clear and unambiguous. This Commission is not only authorized, but is directed by the Governor-in-Council to look into all burdens in the Canadian freight rate structure -- those burdens imposed by law and public policy -- and to recommend methods that will result in the alleviation of these burdens.

Passenger, Commuter and Branch Line Services

260. Due to the fact that the Province of Manitoba was refused any detailed information touching upon other areas which we suggested were suspect, we were restricted in this field to a consideration of matters relating to passenger services, commuter services and branch lines.
261. The Province of Manitoba's statements concerning this problem were submitted by Premier Roblin at the Commission's hearings in Winnipeg. At page 4243, Volume 29, the following appears:

"I want to refer, first, to passenger and related services. In their joint submission to this Commission with respect to the grain traffic moving under statutory and related rates, the railways have pointed out that the grain traffic in 1958 represented 32.7% of the total ton miles of intra-Canadian traffic and only 10.5% of the total freight revenue. According to our calculations with respect to passenger services, in the case of the Canadian Pacific Railway based on the 1958 Annual Report, while passenger train miles represented 36.7% of total train miles, passenger revenue represented only 11.9% of total rail revenue. According to the 1958 Annual Report

of the Canadian National Railways, while passenger train miles represented 36.7% of total train miles, passenger revenues represented only 7.2% of total rail revenue. We suggest that, if as the railways allege, the statutory and related rates on grain are imposing an intolerable burden on both the shippers and the railways, then the passenger services are creating an equally intolerable burden on the freight shippers and the railways.

The next item that we would draw the Commission's attention to as creating a burden on the freight shipper and the railways is that of commuter services. There can be no doubt as to the facts which indicate that these commuter services do result in substantial losses to the Canadian railways. The recent cases before the Board of Transport Commissioners concerning commutation fares substantially prove that the present rates are not even within reach of returning bare out-of-pocket costs to the railways. We would also point out in the case of commuter services, that while the losses are of a particular regional nature since the services are concentrated in Eastern Canada, the effect is to impose a burden on the "captive freight traffic", the major portion of which is in the Atlantic provinces and in Western Canada."

262. In regard to the problem of branch lines, the Premier in his evidence, commencing at page 4244, stated:

"There can be very little doubt that as a result of many operations maintained at present on branch lines, the railways are obliged to offer and to maintain services at less than their out-of-pocket costs with the result that an additional burden is placed on the general freight shipper. This problem of branch line losses is not a new one; in fact, one can trace it almost to the inception of the trans-continental rail lines in Canada. Solution of the problem is particularly difficult because of the various interests involved. There can be no doubt, however, that the burden resulting from these operations is particularly onerous on the shipper. Construction of these branch lines was a decision of management, but the present day cost of operating and maintaining them have to be borne by the freight shipper."

263. To illustrate this fact, reference was made to the Duff Royal Commission on Transportation of 1931-32 which made a detailed study of this problem. Paragraph 27 of the report of the Commission states:

"If good sense had prevailed the executive officers of the two systems would, in 1923, have planned together to meet the transportation requirements of the country, and would have refused to promote or permit irrational and wasteful competition."

264. Paragraph 55 of that report states:

"Canadian railway development during the past decade has consisted almost entirely of the construction of branch lines and both companies have followed practically the same policy. Your commissioners have questioned the representatives of both lines as to the justification for the construction or acquisition of this additional mileage. The explanations given are not such as to convince us that this policy has been sound or wise."

265. Paragraph 58 states:

"To sum up, it is clear that there was intense rivalry between the two systems in new territory, particularly in the Provinces of Saskatchewan and Alberta. The construction program of one company was responded to by an equal or greater program of construction of the other. The development of this territory did not meet expectations, and the railways now find themselves with additional traffic mileage and an increased burden of capital charge."

266. At page 20, the Duff Commission report summarizes the branch line construction by provinces for the period 1923 - 1931, and this summary appears in Volume 29, page 4248. The total for the Canadian National Railways was \$71,000,000; for the Canadian Pacific Railway, \$65,000,000. It is rather interesting to bear these figures in mind when we subsequently discuss the matter of related lines in the Canadian Pacific Railway's cost study of export grain since it is clear that the decisions to build these lines were those of management, and as stated by the Duff Commission at paragraph 50:

"A policy of co-operation would have avoided a considerable part of this expenditure, probably one-third."

267. Premier Roblin also referred to the study by Professor W.D. Jackman entitled, "Critical Analysis of the Canadian Railway Problem" and the excerpt appears at page 4249, Volume 29:

"There is no doubt that there is some excessive duplicate and unprofitable branch line mileage in the west, but certainly not the major portion of the total by any means."

"That this statement is precisely correct can easily be seen by noting the location of duplicate branch lines which the officers of both companies suggested for abandonment at the Senate Committee inquiry of 1938. This mileage is overwhelmingly in Ontario and the East. In the west, the serious branch line duplications are in Manitoba and northern Saskatchewan and are the result of a period of intense competition in branch line construction between the Canadian Northern and the Grand Trunk Pacific."

268. This historical summary is presented as background for the present situation where this Commission has been directed by the Governor-in-Council to look into burdens placed upon the railways by law or public policy and to make recommendations for the alleviation of such burdens. Very little will be gained from a detailed argument as to the historical development of the present problem or its economic effects. While the situation was clearly created by the decisions of railway management, a solution requires a co-operative effort on the part of both railways and shippers. It is in this spirit that the Province of Manitoba has approached the problem and it is in this spirit that we offer our solution.
269. There is in this problem of branch line operations a multiple interest. The railways are desirous of minimizing losses occasioned by non-compensatory operations. The freight shippers who in the ultimate

analysis must bear the cost of any non-compensatory service have a primary interest in seeing that various operations are in fact compensatory. From the purely financial viewpoint this approach would appear irrefutable, but as indicated in the Chapter on "National Economic Policy", the operation of rail transportation facilities in Canada were not predicated solely from the viewpoint of railway revenues. There is also the aspect of public convenience and necessity.

270. This Commission is faced, therefore, with the dual interest of the railways and the shippers desiring more profitable and efficient operations on the one hand and particular areas served by the railways on the other hand desiring to safeguard their economic development. We submit that any solution must have regard to the interests of all parties. While such a solution will not be completely satisfactory to any of the interested groups, it is a compromise in the best interest of all.
271. In the field of passenger services the Province of Manitoba recommends as follows:

Firstly, that the railways should continue to achieve efficiencies by the elimination of duplicate services and by whatever other means are available to them.

Secondly, as to the actual net losses resulting from trunk line passenger and related services, if such services are deemed to be in the national interest, then these losses should be met

from the federal treasury. The losses, for all future purposes, and in particular for the purpose of setting freight rates, should be removed from the accounts of the railways.

The national interest can be determined by the Board of Transport Commissioners.

272. The losses incurred in providing commuter services represent a unique problem. In the United States an attempt is being made by the municipalities and the railroads concerned to solve this problem on a co-operative basis. A similar approach is necessary to a solution of the Canadian problem. This will require discussion between representatives of the municipalities, provincial authorities and the railways. Final decision must rest on the particular facts in each instance, both regional and fiscal. The losses on commuter services should not be a burden on the general freight shipper nor on the federal treasury. The ideal situation would be one wherein commuter services would yield sufficient revenue to meet the fully distributed costs of providing that service.
273. On the assumption that the railways are unable to impose the necessary level of rates, the Province of Manitoba recommends as follows:
- Firstly, unprofitable commuter services should either be abandoned upon application by the railways to the Board of Transport Commissioners, or
- Secondly, net losses on such services - which we define as revenue being less than out-of-pocket costs for each particular service - should be underwritten by the municipalities affected.

Thirdly, that in future the Uniform Classification of Accounts be varied so as to exclude commuter service net losses for freight rate making purposes.

274. In this connection we repeat the statement of Mr. G. C. Campbell, Research Economist with the Canadian National Railway which statement was put in evidence by Premier Roblin and appears at page 4253, Volume 29. The particular quotation is from an article by Mr. Campbell appearing in "Canada Transportation", July 1959, entitled "Big Problems and Big Possibilities", and we quote from that article:

"I predict that if a way could be found for the railways and metropolitan authorities to work together co-operatively in the planning, operation and financial support of comprehensive commuter services, the benefits to the entire area would be so great that were I to estimate an equivalent in dollars, I would be accused of gross exaggeration."

275. In respect to branch line operations, the Province of Manitoba recommends the establishment of a Branch Line Trackage Maintenance Fund. We refer the Commission to page 15673, Volume 92:

"As to the basis for establishing the magnitude of the fund, this will not prove to be a major problem. There is, as the Commission is aware, already provision in Section 468 of The Railway Act for establishment of a fund to meet the annual cost of maintaining the line in what has become known as the East-West Bridge. Section 468 was enacted in accord with the recommendation in the report of the Turgeon Royal Commission for assistance from the federal government to the railways, to meet the cost of maintaining the main line trackage which constitutes the East-West link or bridge. It will be necessary first to determine the over-all branch line mileage of the yardstick railway, the Canadian Pacific, and then to determine the branch line mileage of the Canadian National on the same basis so as to have equitable treatment

between the two railways. The annual amount required in the fund would then be determined as follows: the total branch line trackage for both railways deemed to be non-compensatory would be ascertained and a stipulated sum per mile for trackage maintenance would be established. In its Memorandum in Respect of Results of Cost Study on grain traffic moving at statutory and related rates, the Canadian Pacific Railway stated that the annual total cost of maintenance, including the cost of money, per mile of track in 1958 was \$2,650. (Daily Transcript, Volume 18, page 2617). Since the total cost per mile of track for maintenance alone would be somewhat less, we would estimate the cost of maintenance per mile of track for branch lines at approximately \$2,500. The maximum annual amount of the Branch Line Trackage Maintenance Fund could be determined then on the basis of our estimate of the cost of maintenance per mile of track of approximately \$2,500 multiplied by the mileage of non-compensatory branch line trackage.

The Fund would be operated and administered by the Board of Transport Commissioners and payments from the Fund to the railways would be applied, as in the case of the \$20,000,000 federal freight rate subsidy under the Freight Rates Reduction Act, to a reduction in the relative level of the class and non-competitive commodity freight rates. The railways would submit accounts to the Board of Transport Commissioners as they are required to do in connection with the \$20,000,000 freight rate subsidy scheme and would be reimbursed from the Fund by the Board."

276. We went on to state that the magnitude of this fund would be in the range of \$7,000,000. At page 15766 we pointed out that the railways have advised that no new branch lines are constructed without first obtaining traffic guarantees from prospective users and assessing the situation to satisfy themselves that the branch lines in fact will be compensatory. There is, therefore little likelihood that the non-compensatory branch line mileage determined by this Commission would increase, except in the case of changing traffic patterns. Similarly, the Manitoba proposal would not perpetuate an uneconomic situation since it would be re-assessed at the end of the initial ten-year period.

277. If there remained any doubts as to the magnitude of these burdens, such doubts have been removed by the evidence of the railways regarding their passenger losses.
278. In the case of the Canadian National Railways, an attempt was made to submit an accurate costing of passenger operations on a basis similar to that employed in costing the movement of export grain. The operating deficit, as determined by the Canadian National Railway which appears at page 18418, Volume 111, was \$40,858,000.
279. The Canadian Pacific Railway's loss, (disregarding the statistical gymnastics of "free transportation" as an asset and loss services as a greater asset for the purposes of income tax), total \$36,000,000. This was determined by adding the figure of \$29,352,474 appearing at page 18264 of Volume 109, and the \$6,700,000 of "free transportation". For the two railways we have, therefore, an operating deficit of at least \$75,000,000, which burden must be borne by the freight shipper.
280. In addition to this deficit, there is the very extensive burden of non-compensatory branch line operations.

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281. These matters were discussed with a number of witnesses who appeared before the Commission.
282. At page 1324, Volume 10, the matter is discussed with the President of the Canadian National Railways:

" Q. Mr. Gordon on page 8 at the foot and on page 9 there appears this. Canadian National believes in the principle that in carrying out their obligation to serve the public, Canada's railways should receive for services performed a revenue return sufficient to cover the cost of performing these services, plus a reasonable margin above such a cost. I take it Mr. Gordon that you would apply that principle also to passenger services, for example?

A. Well, first of all, I think I should state that the principle is expressed also as recognizing my own Scottish background. I like to be paid for anything I do. Certainly that principle should apply to the passenger service to the fullest extent that it is possible to do so in relation to the competition that exists.

Q. This page of your submission, Mr. Gordon, was simply stating the principle that services rendered should be compensated for?

A. That is exactly my position.

Q. And then you go on later to show that in the case of grain, of the suggested solutions you think the best one is that in the form of a subsidy?

A. Yes, having regard to the practical facts of the situation.

Q. If by pure chance it were ascertainable that the passenger service was also a deficit service then would you extend your solution to cover that service as well?

A. No, I do not think that follows because you are dealing with a different set of conditions. In the case of passenger service management is completely free under present conditions of law to make application for increase in rates. If the management of the railways chooses not to do so they reach that judgment by a complex of other considerations. It becomes managerial judgment, and we have to decide what benefits or other considerations attach to the provision of a passenger service. My point is, however, that management is free to make that decision, and in the case of the statutory rates we are not free to make application for an increase in rates.

Q. So that the losses encountered, if there are any losses from the passenger service, are distinguishable from losses in regard to the Crow's Nest Pass Agreement in that management has decided on a course of action that results

in the passenger losses, and in the case of the Crow's Nest Pass rates management does not have that decision?

A. Management is not free in the case of the Crow's Nest Pass rates to make any application.

Q. Applying that principle again, Mr. Gordon, I assume if it were ascertainable that branch line operations were earning less than the cost of the service performed would you extend your suggested solution to cover the costs of those services?

A. Yes, I would, provided always that all the factors are taken into consideration. You will remember, of course, that when we make application to the Board of Transport Commissioners they have a view in respect of public convenience and necessity."

283. At page 3881, Volume 27, the same matter is discussed with the President of the Canadian Pacific Railway:

" Q. On page 5, Mr. Crump, regarding the return of net rail investment of Canadian Pacific Railway, this net rail investment would have improved if your passenger revenues could have been increased?

A. I don't think there is any connection.

Mr. Sinclair: You mean return?

Mr. Mauro: Return of net rail investment.

A. Yes, that is right.

Q. Similarly, if your losses on branch line operations had been lessened or eliminated it would have resulted in a better return of net rail investment?

A. Well, I think that is in somewhat of a different category, the loss on branch line operations. You appear to be taking an over-all view of the branch lines of the Canadian Pacific, but to the degree that there are losses, yes.

Q. And similarly, such items as commuter service, insofar as the passengers for that return a fair and reasonable return, it too would have resulted in a better return on your net rail investment?

A. As I understand your question, yes.

Q. So that in short, Mr. Crump, there is not only the grain rates, but there are other avenues that if they, too, could be improved, would result in this improvement in your net rail revenue?

A. There are other avenues, as you express it, that could stand improvement and we are constantly striving to improve them and we have generally the power to do it, but the great difference is that in these avenues we have power to pursue these improvements and I fully anticipate that we will see an improvement, but, of course, in the statutory rates we have no power whatever to alter them.

Q. Well let us then deal with that matter. If you will turn to page 10 Mr. Crump, you say there, since 1947 railway labor expenses have increased over 100%, an increase which cannot be equitably met in the light of fixed rates for the movement of grain and grain products to export positions in Western Canada. I wonder if you can tell the Commission if these figures in railway labor expenses have been equitably met in the light of present passenger rates?

A. Certainly; where a passenger train is profitable it has.

Q. Let us explore that. How is your passenger service? Is your passenger service profitable?

A. The passenger service as a whole on the system is not profitable."

284. At page 3883:

" Q. And the branch lines operation of the Canadian Pacific Railway as a whole, would they have met - equitably met - this increase in labor costs and other costs since 1947?

A. Perhaps not to the same degree. Our study indicates that within the branch line system of the Canadian Pacific there is a fairly large mileage which is wholly attributable to grain, and I would say that those have not. Many others certainly have."

285. At page 4598, Volume 31, the position of the Winnipeg Chamber of Commerce is stated:

"Traditionally, passenger services have been, on the whole losers of money, kept operating by "internal subsidies" from more remunerative services. Particularly is this the case with respect to commuter services where costs are higher because of the low utilization of equipment and the difficulties in adjusting fares. Findings in this regard by the Board of Transport Commissioners are familiar to most people interested in transportation. We note with interest, efforts in the Chicago area by extensive capital outlays to provide more modern equipment and streamlined services with the expectation that commuter services will be self-sustaining.

We believe that the cost of maintaining unremunerative passenger services needs careful examination and that the present competitive position of the railways makes it no longer possible to charge losses on passenger services against revenue from freight services.

Branch Lines: While most railway men know, almost by instinct, which is a branch line and which is a trunk, or main line, it is difficult for them to define the difference closely, even to their own satisfaction. For a layman to try would be foolhardy. ...

We believe it is not an unwarranted assumption that, if purely economic factors were the determinants - we are not suggesting they should be - there would be a much more widespread abandonment of branch lines and services. One transportation authority recently referred to them as "bleeder" rather than "feeder" lines.

We suggest that the internal subsidization necessary to support this network of "bleeder" lines out of main line operations is substantial. In our transportation policy we have proposed: that the railways study the abandonment of unremunerative railway branch lines and services, and the substitution of integrated or other truck services."

286. At page 4720, Volume 31, the Manitoba Federation of Agriculture stated as follows:

"Our major concern with passenger losses is, however, not the fact that losses are incurred. If railway management wishes to maintain a type of operation which provides transportation to employees and other non-paying passengers at a loss and which in total results in annual losses of several

millions of dollars, then there is no justification for the charging of those losses against the captive freight traffic which has no alternative but to move by rail. If, on the other hand, railway management wishes to drop unprofitable passenger movements and is required to continue them because of government regulation, then we think it proper that the losses involved should be met out of public revenue and not out of charges on other parts of the rail operation.

Expressed in a single sentence, our position on passenger losses is that they should be eliminated if possible, but if the passenger services continue to lose money because of railway management decisions, the losses should not be charged against freight revenues, while if government regulation prevents management from eliminating costly services, then the resulting losses should be met by government.

Commuter services: Special significance attaches to one part of the passenger services provided by Canadian railways, namely, the commuter services provided to persons working in down town Montreal or Toronto and living in one of the outlying suburbs. The railways claim they have been losing money on the commuter service, but the users of it have opposed either abandonment or a rate increase. Consequently, the service is being continued at rates which the railways claim to be continuing losses.

This is clearly a service to a large city which has grown too large for its street transportation system and has not provided the necessary extensions. In this case, it is clear that the service should either be terminated or the community served should be called upon to pay the full cost either by higher fares or by a payment from the cities and municipalities served. No part of the cost of commuter service should be charged against the users of other railway facilities or against the national treasury.

Branch line losses: Our position in respect to unprofitable branch lines is similar to our position on passenger services.

Again we have neither the information nor the staff to analyze the situation in detail, but in general principle our members are aware that certain branch lines are failing to pay the cost of operating them with the result that losses on those branches are being charged against earnings on other lines. A precise calculation of the profits or losses on any particular line is, of course, impossible, because the heavily used lines are in

many cases moving traffic which originates and terminates on lightly used branch lines. If the branch line was dropped and that traffic disappeared, the effect on the main line might be disastrous. Considerations of this sort make branch line accounting very uncertain.

Nevertheless, in principle our members hold the view that any branch line which is clearly unable to pay the cost of its operation should be eliminated from the calculation of rates for normal railway operations. ...

If steps in this direction are not taken by the railway, we think there should be no charging of branch line losses against traffic moving on other lines. On the other hand, if the railway applies to abandon the line and establishes that the line is losing money, then they should either be allowed to abandon the line or the loss should be covered out of public revenue. We do not consider it proper that losses under these circumstances should be charged against the users of lines which are normally self-supporting."

287. The Manitoba Wheat Pool at page 4464, Volume 30 stated:

"We further suggest that there are uneconomic branch lines that cannot be abandoned. We agree that there are some that can be abandoned in the near future, and others that can be eliminated over a longer adjustment period. We recommend for your consideration the following approach to branch line abandonment.

(1) The abandonment programs of the railway should be disclosed, rather than hidden, so that provincial and municipal governments, industry and the public can see the overall picture and the purpose. The individual approach is creating distrust and each area goes into opposition because it appears to be singled out.

(2) Once railway officials are convinced of the economic need for abandonment, they in conjunction with governments of all levels, and with industry, should make a joint economic and social study of the area affected so as to establish the adequacy, or otherwise, of alternative services to the communities affected. We suggest that there will be little political or other opposition when there is planned transition to other adequate means of transportation.

(3) We suggest that the cost of line abandonment, its study and its replacement by adequate alternative transportation, where necessary, should be a charge to all levels of government and the costs are small in relation to the burden, or the potential burden on present rail users.

(4) We recommend during transitional periods for lines approved for eventual abandonment and for lines ruled to be more or less permanently maintained for public convenience and necessity, that operating losses be absorbed by the national treasury (subject to annual or periodic review by the Board of Transport Commissioners), and that no depreciation or return on capital be allowed to the railways, excepting on new capital placements approved by the Board. We would point out that the railways lose these, in any case, if their applications for abandonment are approved. Only bare out-of-pocket costs should be included in calculating operating losses, for lines subsidized during transitional periods."

288. The Regina Chamber of Commerce at page 5446, Volume 35 stated:

" Q. (By Mr. Mauro) - And, Sir, the Regina Chamber of Commerce, I suggest, when they are faced with a railway company approaching the federal treasury to be compensated for what they allege are losses, the Regina Chamber of Commerce has felt that the losses from passenger service are the same as losses from carrying grain insofar as the federal treasury is concerned and the tax payer is concerned; is that right?

A. I think that would be right.

Q. Would that be a fair assumption on what you are saying in your brief when you said we should look at other matters which are problems for the railways?

A. Yes, we asked that that be done.

Q. The Regina Chamber of Commerce is saying that before the federal treasury starts paying out the tax payers' money on one segment of the freight rate structure, we should have a look and see what the railways are losing on passenger service and branch line and commuter service; is that correct?

A. Yes."

289. At page 5696, Volume 36, Premier E. Manning on behalf of the Province of Alberta, stated as follows:

" Q. One of the suggestions of the Province of Manitoba was that passenger losses should be removed from the freight rate structure, and that if transcontinental or trunk line passenger services were deemed essential in the national interest, then the losses in that field of rail transportation should be made up through some other source, but not extracted from the freight user. Would the Province of Alberta support such a proposal as that?

A. Our thinking in that direction is along this line: first of all, we would like to see the various sectors of railway revenue - passenger and various categories of other railway movements - broken down and a clear study made to determine to what extent each of these is paying its proper share of the overall revenue required by the railways. Until that is done and that picture is cleared, we think it is extremely difficult to say whether there is any more argument to say, "this particular category ought to be aided rather than the aggregate. " We would approach it from the standpoint that the aggregate is important, but, if you break them down into categories and there seem to be apparent reasons why one particular category is in a different position from the others, it should be considered at that time."

290. At page 5723, Volume 36, the views of the Alberta Farmers' Union are set forth:

" Passenger Traffic: Another facet of the problem is rail passenger traffic. From time to time news reports are made public to the effect that the railways are losing money on their passenger runs. On many local lines this is self-evident. Trains often run with almost empty coaches, a situation which must contribute substantially to any rail deficit. A few months ago, statements appeared in the press, attributed to officials of our railway companies, to the effect that transcontinental passenger services were uneconomical, and would have to be reduced. We understood that this has not been done, due to public opposition. If such needed economies cannot be effected, due to public opposition, then we suggest that the public must absorb the loss, presumably through the public treasury."

291. At pages 6934 to 6939, Volume 41, the Province of British Columbia's position is stated. Re Commuter Services at page 6938:

"If a community deems the service to be essential then it should find the means, either by subjecting itself to fare changes or by subsidy, or a contractual arrangement with the railway, to maintain it.

Should local commuter deficits have the effect of lowering the effectiveness of overall railway service then the matter may be deemed to be of national concern. In this case the federal government, and not the shipper should be dispensers of public benefits.

The same reasoning is applied to the keeping open of lines declared to be strategic or otherwise essential for national defence."

292. A recent statement of the I.C.C. is quoted to the effect that:

"This record does not indicate that the railroad industry has the financial ability to retain any of its services or facilities solely as standby capacity. Those who benefit from any standby capacity that should be maintained must assume the obligation of financing such standby service to the extent of their needs."

293. British Columbia recommends:

"It is specifically recommended in this submission that in the light of the present day alternative transportation facilities and unwarranted burdens on freight shippers, abandonment of non-compensatory passenger services be sympathetically considered by the Board of Transport Commissioners. Where such services are deemed to be in the public interest then a subsidy should be paid to the railway which dispenses public benefits by the body requiring such a service."

294. In regard to branch lines, at page 6939:

"When there is no reasonable alternative means of transportation the solution must be sought elsewhere. If the problem is deemed to be of a national public interest then a federal subsidy should be made available to railways in

return for the continuance of service. The recovery of out-of-pocket losses from shipper of captive traffic which is not subject to competition has obvious inequities which will not diminish with time."

295. At page 7040, Volume 42, the St. Catherines District Chamber of Commerce:

"Q. Just so that this position of your association is completely clarified, I take it that the general approach is that from the viewpoint of the shipper in Canada this Royal Commission should investigate and assess whether or not various movements which result in deficits to the carriers, because in the opinion of your association these deficits have to be borne by other freight shippers?

A. That is the present situation.

Q. Would you apply that to such movements as passenger services also?

A. Yes.

Q. And branch line operations?

A. In all fairness, yes.

Q. Commuter services?

A. I am not familiar enough with them."

296. At page 7334, Volume 43, the Associated Chambers of Commerce of South Western Ontario stated:

"Q. And your city of Windsor and South Western Ontario Associations that you represent would treat on the same basic principle any losses that the railway suffers. In other words, I trust that your association is not singling out the statutory grain rates and saying that they represent the sole burden on the freight structure?

A. That is right.

Q. And the associations that you represent would be strongly recommending to this Commission that they investigate passenger losses, and if they are found that they be removed from the back of the freight shipper. Is that correct?

A. That is correct.

Q. And that this Royal Commission should investigate the losses of commuter services, and if they find that there are losses on commuter service, these too, should be removed from the backs of the freight shippers?

A. Yes.

Q. And that they should investigate the branch line operations, and to the extent that they represent losses that an attempt be made at removing these losses from the back of the freight shipper?

A. That is right."

297. At page 9849, Volume 53, the Canadian Manufacturers Association:

"As set out in the judgment of the Board referred to above, the regulative bodies, both in Canada and the United States have held that such revenue deficits incurred by the passenger service must be compensated for by earnings on the freight service, and that the freight service may be required to bear an increase in rates to offset the deficiency in the aggregate earnings attributable to the inability of the passenger service to contribute its full share of the burden.

The problem of the railroad passenger train deficit has received more attention in the United States than it has in Canada and was recently the subject of a proceeding before the Interstate Commerce Commission in its docket No. 31954, in which the Commission's decision was released on May 25, 1959. Pointed up in its conclusions is the fact that the financial loss on the passenger service is real; it is large and appears to be growing, and it endangers the future welfare of the railroad industry. It stresses the need of further action by the railroads in developing on an industry-wide basis, policies and plans for reconstituting the railroad passenger service into a less extensive network more closely tailored to the needs of the public."

298. At page 9851, the Canadian Manufacturers Association submit as follows:

"It is respectfully submitted that the Commission should recommend that the Board of Transport Commissioners be directed to prescribe a formula to govern the separation of freight and passenger expenses in order that information may be available on a current basis as to what contribution the freight services require

to bear in maintaining passenger service. It is further recommended that the freight rate structure should not be burdened with these passenger deficits."

299. At page 9915, Volume 54:

"A. I have mentioned one segment that we think the national treasury should stand if they want that service; that is a national defence service. But we do not think the taxpayers even should be saddled with providing the service for others to use. We believe that all these services should be paid by the people who use the service.

Q. And if they refuse to pay for them?

A. Then the Board should allow abandonment.

Q. And if the Board refuses abandonment on the basis that the line should be maintained in the public interest?

A. Well you are pinning me down with a great deal of ifs. If in the national interest the Board decides it has to remain, then if it is a national interest, it should be paid there."

300. At page 10116, Volume 55, the Canadian Federation of Agriculture stated:

"Losses which are occurring on commuter and other passenger services should not be charged against freight revenues. If public and railway policy requires a continuance of passenger services which are resulting in losses to the railways, the losses involved should come from public revenue. Such losses should not be recouped from freight revenues."

301. At page 19843, Volume 120, Mr. A. Hart, Vice-President, Canadian National Railways:

"Q. Generally, on some of the matters that have been placed before this Commission, as I understand the submissions from the Canadian National Railway in regard to commuter services, the Canadian National Railway accepts the proposition advanced by the Province of Manitoba that commuter service should stand on their own feet and should not be a burden on the freight shipper. Is that a correct assessment?

A. It is a correct assessment. Yes.

Q. As I read your submission in the field of passenger service generally you adopt the proposal of the Province of Manitoba that passenger services that are maintained in a national or public interest should not be a tax on the freight shipper but should be a tax on the general revenues?

A. Yes.

Q. And in the field of branch lines your national policy line, as contrasted with the Canadian Pacific position as stated by the Executive Vice-President, was to the effect that Canadian Pacific has no branch lines which, in the opinion of the Canadian Pacific, are maintained or operated in the national interest. It is the viewpoint of the Canadian National that they do have such lines, is that correct?

A. Yes we think that is the case, that some of the lines may well be, even under our proposition, be found in that category.

Q. And these lines, while not compensatory, must be maintained pursuant to policy?

A. Yes, we see the possibility of certain lines being found, (1), to be uneconomical and (2), that they must be maintained in a broad national interest. Thirdly, we say whoever requires us to maintain it should pay us for it as a specific payment for the operation of the line."

302. This subject of passenger, commuter and branch line services is one of the few areas where all of the parties appearing before this Commission, including the Canadian Pacific Railway agree in principle with a specific proposal.

303. One might misinterpret the position of the Vice-President of the Canadian Pacific Railway, Mr. R. A. Emerson, and the statements of Counsel as indicating opposition to the Manitoba proposal. An examination of the evidence of Mr. Emerson makes it clear, however, that the Canadian Pacific Railway is in complete agreement with the principle of the Manitoba proposal.

304. At pages 18236 and following, of Volume 109, the witness Emerson discusses this matter of branch lines and then concludes at page 18249 with the recommendation of the Canadian Pacific Railway. The recommendation takes the form of an amendment to Section 168 whereby the Canadian Pacific Railway proposes a more definitive procedure for line abandonment. In the context of this discussion the important part of the proposed amendment is 168 (5) (b) on page 18250 which reads as follows:

"Where the company has given notice of intention to abandon the operation of a line of railway under this section and an application has been made for a stay, the Board may grant the stay if it is satisfied . . . that sources of revenue for a reasonable period in the immediate future sufficient to exceed those costs during the same period have been guaranteed."

305. At page 18267 with regard to passenger services an amendment to Section 315 is proposed and again the important section in this discussion is Section 315 A 5 (b) on page 18268, which reads as follows:

"Where the Company has given notice of intention to discontinue passenger service on a line of railway under this section and an application has been made for a stay, the Board may grant the stay if it is satisfied (b) that the sources of revenue for a reasonable period in the immediate future sufficient to exceed that cost have been guaranteed."

306. It is submitted that the Canadian Pacific Railway has adopted the proposal of the Province of Manitoba as supported by the witnesses above referred to. Firstly, the railways should be encouraged to eliminate deficit operations. Secondly, if the Board of Transport Commissioners determines that while certain operations are in fact non-compensatory, they should be maintained in the public interest.

Thirdly, those who direct the continuance of the service should compensate the railways for this operation. There is no disagreement between the Canadian Pacific Railway and the Province of Manitoba on this matter. It is clear that in the case of the Board of Transport Commissioners the party ordering a continuance of the non-compensatory service is in fact the Federal Government, since it is the Federal Government which has the authority, and the sole authority, to govern inter-provincial railways in Canada. Therefore it is semantics for the Canadian Pacific Railway to suggest that those who order the continuance of the service should pay - and then refuse to admit that the only party who can order the continuance of the service is the federal agency, namely, the Board of Transport Commissioners. It is our position that in the field of passenger, commuter and branch line services this Commission has a clear direction from all of the parties, including the railway companies.

307. As indicated by various witnesses for the railways, the prevailing concept governing rail management is that losses resulting from deficit operations are met by the revenues of profitable operations. The Canadian Pacific Railway and the Canadian National Railway now propose a material departure from this prevailing concept. In relation to the carriage of grain under statutory and related rates they have suggested: firstly, the carriage of grain under statutory and related rates has resulted in a very large deficit to the railways; secondly, that they cannot recoup these deficits from other freight traffic; and thirdly, that the losses should not be met by increased charges to the shippers but should be subsidized by the federal treasury.

308. The Province of Manitoba has stated on numerous occasions that the movement of export grain from Manitoba is, in fact, compensatory and that the movement of grain to export position, far from being a deficit operation or a burden to the shipper, is a profitable operation for the Canadian railways. We now suggest that in the field of branch line, commuter and passenger services that logic demands a similar approach to all deficit operations of the railways. In short, those operations of the railways which result in deficits should either be abandoned or if they are found to be in the national interest the deficits incurred in their continuance should be met by subsidy from the national treasury. On the other hand, if the railways exercising their managerial discretion, wish to maintain a deficit service not found to be in the national interest, then we submit that the cost of providing the particular service should be removed from the Classification of Accounts in the fixing of freight rate levels.

Recommendations

309. With regard to passenger and related services - Firstly, that the railways should continue to achieve efficiencies by the elimination of duplicate services and by whatever other means are available to them.

310. Secondly, as to the actual net losses resulting from trunk line passenger and related services, if such services are deemed to be in the national interest, then these losses should be met from the national treasury. These losses for all future purposes and in

particular for the purposes of setting freight rates, should be removed from the railways' Classification of Accounts. The national interest can be determined by the Board of Transport Commissioners.

311. With regard to commuter services -

These losses represent a unique problem. In the United States an attempt is being made by the municipalities and the railroads concerned to solve this problem on a co-operative basis. A similar approach is necessary to a solution of the Canadian problem. This will require discussion between representatives of the municipalities, provincial authorities and the railways. Final decision must rest on the particular facts in each instance - both regional and fiscal.

The losses on commuter services should not be a burden on the general freight shipper nor on the federal treasury. The ideal situation would be one wherein commuter services would yield sufficient revenue to meet the fully distributed costs of providing that service. On the assumption that the railways are unable to impose the necessary level of rates, we suggest to the Commission that it recommend:

312. Firstly, unprofitable commuter services should be either abandoned upon application of the railways.

313. Secondly, that losses on such services which we define as revenue being less than out-of-pocket costs for each particular service should be underwritten by the municipalities affected.

314. Thirdly, in future, the Uniform Classification of Accounts be varied so as to exclude commuter services net losses for freight rate making purposes.

315. With respect to branch line operations -

Our position with respect to branch line operations is that there should be created a Branch Line Trackage Maintenance Fund to cover the maintenance costs of those branch lines which are shown to be non-compensatory, but which must be maintained in the national interest.

CHAPTER VII

STATUTORY RATES ON EXPORT GRAIN

313. The Province of Manitoba along with the Provinces of Alberta and Saskatchewan and representatives of the grain trade at the organizational meeting of this Commission in September, 1959, submitted that this Commission had no direction under the terms of reference to investigate the rates on the movement of grain and grain products to export positions. The views of the Provinces and the grain trade are fully set out in the transcript.
317. The Commission decided that the matter of the rates on grain was within the purview of the terms of reference and determined that they would permit separate investigation of these rates. While the Province of Manitoba is still of the view that there was no direction to the Commission to make such an investigation, we feel now that a real benefit can arise from this investigation. This study has produced detailed statistical data which have proven conclusively that these much maligned rates, far from being a burden on the freight shipper, do in fact make a contribution which lessens the over-all burden on the Canadian freight shipper.
318. Since 1946 there has been a deliberate campaign on the part of the Canadian railways in general and the Canadian Pacific Railway in particular, to destroy this bona fide contract determining rates on grain moving to export positions. On every opportunity the Canadian Pacific Railway has attacked these rates as the only evil or inequity in the Canadian freight rate structure and has placed upon these rates the stigma of responsibility for the financial and other problems confronting the Canadian railways.
319. The campaign of the Canadian Pacific Railway to destroy this long standing agreement was formally launched in 1949 before the Turgeon

Royal Commission on Transportation. At that time the Canadian Pacific Railway boldly suggested that the rates were not only non-compensatory but that they should be permanently removed from the control of Parliament and placed under the jurisdiction of the Board of Transport Commissioners. The evidence tendered and the conclusions of that Commission can be found in the report of the Royal Commission dated February 9, 1951, where in Chapter 10 entitled "Crow's Nest Pass Rates", at page 243, the Commission states:

" The Commission has been asked to recommend that the statute be repealed. This proposal comes in the first instance from the Canadian Pacific Railway Company which says:

- (1) That it is desirable that freight rates without exception should in all respects be subject to the jurisdiction of the Board of Transport Commissioners, and,
- (2) That, while the national policy may require special assistance to producers of grain in Western Canada, such assistance should not be given at the cost of other users of railway services or at the cost of the railways."

320. At page 251, the Commission refers to the submission of The Canadian Pacific Railway, and states: -

" It means (C. P. R. suggestion) that provision should be made to have these Crow's Nest Pass rates bear their proportion of general freight rate increases as in the case of the rates fixed by the Maritime Freight Rates Act. In this manner they would have been increased in 1948 by 18% according to the calculation made by the Canadian Pacific Railway Company, and all other rates would likewise have taken an 18%, instead of a 21%, increase.

If this second suggestion were adopted the final question remaining to be answered would be, who is to pay the difference between the basic rate level and the amount added by the increase, that is, should the burden of the increase fall upon the shippers of grain and flour or should it be borne by the treasury of the country in the form of a subsidy? If it is by subsidy, the subsidy should be paid to the railways, as is the case under the Maritime Freight Rates Act."

321. The Commission rejects the arguments and suggestions of the Canadian Pacific Railway that the Crow's Nest Pass rates were either non-

compensatory or a burden and concludes on page 252: -

" On the whole therefore no justification can be found for the statement that the exemption of the Crow's Nest Pass rates causes an undue burden upon shippers as a whole or upon any particular class of shippers. The application made for their increase based upon this argument cannot be entertained."

322. One might have expected that this decision would have closed the matter for an indefinite period of time. However, this was but the opening shot in a campaign by the Canadian Pacific Railway that culminated in their success in having the matter re-opened before this Commission, resulting in a complete costing of the movement of statutory grain at tremendous cost in both time and money. Since 1949 the officers of the company have repeatedly made statements which in effect denied the findings of the Turgeon Royal Commission and have continued to allege that the Crow's Nest Pass rates were, in fact, a burden. Not satisfied with the findings of a quasi-judicial inquiry conducted by the Turgeon Royal Commission, the Canadian Pacific Railway have repeated their rejected arguments to service clubs, other public bodies, and have even used these rates in their attempts to resist increased wage demands before conciliation boards.

323. The synthesis of the Canadian Pacific Railway position is illustrated by the opening statements of Counsel for that company. At page 9 of the transcript:

" ... the greatest inequity in the freight rate structure-- and possibly the only one of significance -- is that which results from what is known as the statutory rates on grain and grain products in Western Canada as required in their application under section 328, sub-sections 6 and 7, of the Railway Act."

324. At page 10:

" ... it will also have something to say about the statutory rates on grain and the burden that that imposes on the railways and on the shippers of other commodities. Canadian Pacific will lead certain proof in that regard, part of which will

show that if the general increases in freight rates in the postwar period had been applied to grain, in the period 1948 to 1958, the revenues of the Canadian Pacific would have been approximately \$235 million higher than they were. The evidence will also show that in 1958 the statutory grain rates accounted for about 27% of the work performed on the Canadian Pacific, but only brought in approximately 9% of the freight revenue. This burden will be demonstrated in our brief by generality and also by specific."

325. There has been no change since that date in the position taken by the Canadian Pacific Railway on the one hand, and the Province of Manitoba on the other, in regard to the rates on the movement of grain. The position of the Canadian Pacific that the rates were non-compensatory and a burden on other shippers was disputed from the very beginning of these hearings by the Province of Manitoba, which submitted that these rates were in fact compensatory and were making a contribution to rail revenues. We refer to page 1238, Volume 10, where the Acting Chairman is quoted as follows:

" Mr. Mauro, what is your position from Manitoba as to the grain rates being compensatory?

Mr. Mauro: We are going to allege that the present grain rates are, in fact, compensatory. We are going to cross-examine the cost studies of the railways to that effect. As far as the Province of Manitoba is concerned, the present rates do, in fact, return out-of-pocket costs."

326. After more than 130 days of hearings, the Province of Manitoba is not required to change one syllable of that statement of December, 1959, since the evidence is now before this Commission that the rates are in fact compensatory and do in fact make a contribution. The foregoing is by way of preface to our submission on this matter of the statutory grain rates. We will present our argument on the statutory grain rates under three major headings, namely:

- (1) legal-historical,
- (2) analysis of the statistical cost data,
- (3) and, reasonableness of rates.

327. Early in the 1880's gold was discovered in the Kootenay Valley of British Columbia which prompted intensive prospecting in that area, which in turn lead to the discovery of rich silver and base metal properties. The location of the mineral areas in close proximity to the American boundary, coupled with the geographic barrier of the mountains to east-west communication, made the locality more accessible to American territory and to American water and rail communications. Base metal extraction required smelting which posed the problem of securing adequate supplies of coking coal. Smelters were already located at the American coast and at the inland states and the American railways had already built northward into the region. The ores, of necessity, moved by water and American railways to these smelting centers. It was the belief of individuals interested in the development of a Canadian nation and a Canadian economy that, unless adequate steps were taken, this area would become an adjunct to the north-western states. The Canadian government became concerned about the growing domination of American railways and financial interests in the Kootenay Valley region. As early as 1889 the President of the Canadian Pacific Railway, Mr. Van Horne, reported to the shareholders in the Annual Report as follows:

" To prevent the invasion by foreign lines of the Kootenay district in British Columbia, a district rich in precious metals and other natural resources, your directors have secured the control of the charter of the Columbia and Kootenay Railway Company and agreed with the Provincial Government that the railway shall be built about 30 miles in length during the present season to connect the navigation waters of Kootenay Lake with those of the Columbia River, thus opening a line of steamboat and railway communication of more than 250 miles."

328. This concern by the Canadian Pacific Railway of American infiltration into the Kootenay area is reflected in subsequent Annual Reports and in

the Report of 1896 the following appears: -

" But even with these important additions to its facilities for handling the traffic of the mining districts, your company will continue at a disadvantage in competing with American lines (which have already reached Nelson, Rossland, and other important centers in these districts) until it shall have direct rail connection of its own. Until then the greater part of the mining traffic will be beyond its reach and will continue to be, as at present, carried by the American lines southward.

Your Directors are strongly of the opinion that any delay in securing your interests in that direction will be extremely dangerous -- that unless your company occupies the ground others will, the demand for shipping and travelling facilities being most urgent. The Directors feel that they cannot too strongly urge the immediate construction of a line from Lethbridge to the connection with your Columbia and Kootenay Railway at Nelson, a distance of 325 miles, and anticipating your approval they have already taken steps toward the commencement of that work on the opening of spring."

329. In our examination of Mr. Reid, at page 2035, Volume 15:

" Q. There is no serious doubt in your mind that in 1896 the Canadian Pacific was desperate to get a rail line into the area, that they could not compete with the American rates?

A. Yes, I think the officers of the company desired very much to get a line into that area.

Q. That is what the statement (reference to the annual report of 1896) means, does it not?

A. I have not argued that whatsoever."

330. The Canadian Pacific Railway had various options on rail lines and charters in the area, particularly the Alberta Railway and Coal Company which had a line extending from Dunsmore to its coal mines and Lethbridge -- a distance of 109 miles. We refer to page 2036 of the Daily Transcript:

" Q. Now, Mr. Reid, the C.P.R. had entered into an option with the Alberta Railway and Coal Company in 1892?

A. In 1892 Canadian Pacific leased a line of the Alberta Railway and Coal Company at a rental equal to 40% of the gross earnings, but, first, the coal company had to widen the narrow gauge to standard gauge before this lease took effect and there was an option in the lease agreement -- not an option, but an undertaking, that by

December 31, 1897, Canadian Pacific had to buy the land for \$9,000 per mile.

Q. This option had to be exercised on or before the 31st of December 1897?

A. Yes. Prior to that date it was optional but it had to be exercised.

Q. The Canadian Pacific had to have \$981,000 to exercise its option, is that correct? If you check the report for the following year you will see the payment out of \$981,000, \$9,000 per mile for 109 miles?

A. I have no reason to doubt that.

Q. I further suggest that the Company was finding it difficult to raise capital at that time?

A. 1897?

Q. Yes.

A. In 1897 there was \$1,666,000 raised by the issue of preference stock. That was one source of funds in that year.

Q. I am quoting from the Annual Report for the year ending December 31, 1896, page 5:

The recovery in business which afforded such good promise at the date of the last Annual Report did not long continue. A feeling of dread and uncertainty as to the result of the last general election in the United States, in view of the serious financial questions at issue caused a stagnation in business in that country probably more serious than that of any of the three preceding years. While this had no very marked effect upon the local business in Canada, it reduced, to a serious extent, the inter-change of traffic between the two countries, and your subsidiary railways in the United States, the Minneapolis, St. Paul and Sault Ste. Marie, and the Duluth, South Shore and Atlantic suffered an important shortage not only in their domestic traffic, but in the business inter-changed with your lines, making it necessary for your company to again give them financial assistance. The chief cause of loss in your Canadian business during the last half of the year was the short wheat crop in the West ... which furnished for carriage about 10 million bushels less than that of 1895. Better prices for wheat and the development of traffic in the mining districts of British Columbia prevented so large a shrinkage in earnings during the second half-year as might otherwise have been expected, and the year's results are, considering everything, not unsatisfactory to your directors."

331. We refer the Commission to page 2039 where reference was made to the

History of the Canadian Pacific Railway, by Harold A. Innis:

" The depression of the '90's which occasioned the decline in earnings and the earnings of subsidiary lines the Duluth, South Shore and Atlantic and Minneapolis, St. Paul and Sault Ste. Marie, made impossible the sale of preference stock at a satisfactory price and even made it necessary to re-assume £ 300,000 of this stock negotiated before the depression. With recovery £ 100,000 was marketed at nearly par in 1897 and £ 2,285,000 a year later."

332. It is clear that the time was fast running out on the Canadian Pacific

Railway for the exercise of their option to the Alberta Railway Company and as stated by the Turgeon Royal Commission in their chapter on this matter at page 238:

" In 1897 the Canadian Pacific Railway Company desired to build a railway from Lethbridge ... through the Crow's Nest Pass into Nelson, British Columbia, and was in need of financial assistance for this enterprise."

333. At page 240:

" It is, of course, certain that the Company did not build the railway merely for the sake of the subsidy. The real value of the subsidy was that it enabled the Company to construct a line which gave it an all-rail link between its main line and the Kootney region, and thus assured it of a rail monopoly throughout a large territory believed to be rich, particularly in mineral resources, and which might otherwise have been traversed by American lines. Moreover, the completion of the line entitled the company to a grant from the government of British Columbia of 250,000 acres of land in that Province."

334. There was never any question in the minds of the railway officials at that time where they must look for assistance to complete the line.

335. At page 2035 of the Daily Transcript, an excerpt from page 10 of the Annual Report of 1896 is quoted:

" The unfavorable conditions which have prevailed for the past three years have prevented any effective action towards providing for the traffic of the mining country, but the Directors feel now that the improved position and prospects of the Company, together with the magnitude of the interests at stake, will fully warrant this important step. The interests of the country at large are so much concerned in this question that your Directors confidently expect reasonable assistance at the hands of the Dominion Government."

336. It was no simple matter for a corporation such as the Canadian Pacific Railway to obtain additional assistance from the Dominion Government. The antagonism and controversy that had surrounded this Company

from its inception down to 1897 was such that any government was .
reluctant to grant additional financial support. We refer to the study
of this period by J.W. Dafoe in his "Clifford Sifton In Relation to His
Times", quoted at page 2040, Volume 15:

" Apparently there were also questions of high policy involved
in this arrangement. In an open letter to the Press of
Canada, dealing with railway questions, written by
Sir Clifford Sifton, in January 1929 there appears this
passage: ' I remember when as a young minister in
Laurier's cabinet, Van Horne and Shaugnessy said a
line into the Kootenay mining district would not be considered
for fifteen years. Also I remember that within six weeks the
same two gentlemen came into my office and said that they
had to build this line and wanted a large bonus for doing it,
that the C.P.R. was on the verge of bankruptcy. We gave
them this bonus against the public sentiment of two-thirds of
the people of Canada. They built the line and the Kootenay
mining development saved the C.P.R. and saved a good
many other things in Canada. '"

337.

This was the general atmosphere that surrounded the negotiations which
resulted in the Crow's Nest Pass Agreement of 1897.

338. The Federal Government was authorized under the agreement to grant
assistance in the form of a subsidy of \$11,000 per mile of railway, not to
exceed in aggregate the sum of \$2,630,000. The Company, in consideration
of receiving this financial assistance, entered into certain covenants with
the Government. Three of the more important terms related to the
control of rates, the reduction and regulation of rates on the movement of
grain to export positions, and the reduction and regulation of rates on
specified westbound commodities. A copy of the Agreement and the
enabling statute appear as an appendix to this Argument.

339. The intent of the Government in entering into the Agreement is illustrated
with reference to the discussions in Parliament when the matter was
placed before the House. Mr. Blair, the Minister of Trade and
Commerce, at page 4522 of Hansard for June 18, 1897, (which quotation
appears at page 2052, Volume 15) stated:

" The Committee will have noted that we have sought to
insure the country a large measure of relief from the
rates which have obtained since the Canadian Pacific

Railway was started. We have imposed conditions upon the Company which are very largely restrictive of their present powers. We have embraced in one of the sub-clauses of these resolutions a considerable list of articles which go into very large consumption among the people of the western provinces and we have secured an agreement on the part of Canadian Pacific Railway that very substantial reductions will be made upon the existing rates. We have also received the consent, on their part, that the rates upon all goods -- whether they are shipped in or shipped out, either going into or coming out of that portion of the province which is covered by the route of this railway, or any freight or merchandise which either is shipped into British Columbia over this line or shipped out of British Columbia over this line -- ought to be subject to the control and supervision of the Railway Committee of the Privy Council as in the case with other railway companies in Canada."

340. Pursuant to the Agreement, rates on grain were reduced on the first day of September, 1898 by $1\frac{1}{2}\text{¢}$ and there was a further reduction of $1\frac{1}{2}\text{¢}$ on the first day of September, 1899. To point up the fact that this reduction was not satisfactory to the Western producer, in 1902 the Manitoba government entered into an agreement with the Canadian Northern Railway whereby that railway agreed to move grain and grain products to the Lakehead at a rate below that established under the Crow's Nest Pass Agreement. The Canadian Pacific Railway voluntarily reduced their rates to this lower level. This lower rate was maintained until 1918 when the agreement of 1897 was suspended. In 1922, as a result of hearings before a parliamentary committee, the rates on grain and grain products were re-instituted at the Crow's Nest level and they have remained at this level since that time.

341. When one party to an agreement attempts subsequently to rescind unilaterally their obligations under that agreement, the tribunal of inquiry not only has the right but the duty to investigate all of the facts surrounding the agreement, particularly the benefits received by the parties to that agreement. The benefits received by the Canadian Pacific Railway were set out by Mr. Reid at page 1936, Volume 14:

" Q. From your study of it down through the years up to

the present have you discerned any misunderstanding by people as to the amount of the aid by cash or otherwise received by Canadian Pacific in the building of the Crow's Nest Pass line?

A. I have seen a number of statements that contained incorrect statements.

Q. For instance?

A. On more than one occasion it has been said that the interest of the Canadian Pacific in Consolidated Mining and Smelting Company of Canada, Limited arose from the Crow's Nest Agreement. This is absolutely wrong. The interest of Canadian Pacific in Consolidated Mining and Smelting was in no way connected with construction of Crow's Nest line. Canadian Pacific's interest in Consolidated Mining and Smelting had its beginning as a speculative investment acquired originally by purchase and added to by purchase of stock from time to time in later years. "

342. The Crow's Nest Pass Agreement gave to the Canadian Pacific Railway Company a cash subsidy of \$11,000 per mile up to a total of \$3,600,000. Construction of the line with government backing placed the Company in a position to acquire and exercise the franchise of the British Columbia Southern Railway and thus come into possession of 3,350,000 acres of land and six square miles of coal lands granted by the Province of British Columbia.

343. It is of interest to trace the historical background to the acquisition of the smelting facilities in the Trail-Rossland area of British Columbia. The matter was discussed with Mr. Reid commencing at page 2068, Volume 15, quoting at 2070:

" Mr. Mauro: It is my suggestion, Mr. Reid, that the C.P.R. obtained their interest in British Columbia Smelting in the direct process of obtaining routes and railway mileage in the Kootenays.

A. That is a very general statement, Mr. Mauro. The transaction took place during a certain period of years when development was going on in that district.

Q. The Trail smelter -- correct me if I am wrong -- was built and owned by F.A. Heinze; he had built the smelter in conjunction with the railway from Rossland to the smelter and there was approximately 33 miles of

rail line?

A. It wasn't in conjunction in the legal sense. The Columbian Western Railway was one entity and the smelting company of which he evidently owned a share was another.

Q. The first smelting unit of Heinze was in operation in February of 1896 and five furnaces by 1897, and the railway had been constructed under a charter granted to his company, the Columbia and Western Railway Company, whose franchise permitted construction to the Pacific coast; is that correct?

A. I would accept that.

Q. It was this franchise which I suggest was very important to the C.P.R. but would have been worthless without the complete link of the Crow's Nest line?

A. No.

Q. And I further suggest that it was for this railway of Heinze that the smelter was obtained?

A. The smelter was obtained in the manner which I set out in my evidence.

Q. I refer you to the Annual Report of 1897 of the C.P.R. at page 7, commencing, paragraph 15:
 'The coal deposits made accessible by the Crow's Nest Railway are of great extent and extraordinary character. The aggregate thickness of the beds in the immediate vicinity of the railway exceeds 125 feet, and the coals are of excellent quality and makes superior coke, the latter being of a special consequence as affecting the smelting of ores; and in this connection it is worthy of remark that the mining districts of southern British Columbia are exceptionally fortunate in possessing an abundance of coal, a boundless supply of timber, numerous water-powers, a healthy climate, and, close at hand, agricultural district affording cheap and plentiful food. Arrangements have been completed, subject to the approval of the Dominion Parliament, whereby your Company may acquire the the Columbia and Western Railway extending from Robson to Rossland (33 miles) for the sum of \$800,000. With this property will be acquired the smelting works at Trail Creek, and about 270,000 acres of land in the vicinity, these being included in the purchase price named.'

Rossland having become the principal mining center in British Columbia, it was necessary either to build an independent line to that place or acquire the Columbian and Western Railway, and the latter was clearly the wiser course.'

Now the agreement with the government was executed in September, 1897, Mr. Reid?

A. Yes.

- Q. And the C. P. R. took over the Trail smelter in March of 1898?
- A. I don't have the date.
- Q. You could look that up?
- A. The agreement was dated February 11, 1898. It sounds reasonable.
- Q. Then they operated under the name of Canadian Smelting Works?
- A. Yes.
- Q. Now, between the organization of Consolidated and the year 1918 there was, as I understand it, a great deal of trouble in extracting the zinc, especially from what subsequently was referred to as the Sullivan mine?
- A. Yes, but the Sullivan mine was not in the picture as far as Consolidated was concerned at that time.
- Q. But this smelter at Trail went into what subsequently became known as Consolidated Mining and Smelting?
- A. It did, yes."

344. At page 2074:

- " Q. My questions are restricted to the acquisition of the Trail smelter which was the introduction of the C. P. R. into this valuable business of mining and smelting. In your summary you state that the interests in the smelter was purchased for \$200,000?
- A. Yes.
- Q. Does that appear in the agreement between F. August Heinze and the trustees, that break down?
- A. I can read certain passages from the agreement which indicate how it was done. 'The said vendor shall sell -- that is Angus and Shaugnessy -- shall purchase certain other properties herein-after described, and at the price and on its terms hereinafter specified.
- The purchasers will pay the said purchase price as soon as the land and properties described in the said Schedule A as those to be conveyed shall be conveyed to the purchaser as aforesaid. '
- Q. What was the purchase price?
- A. \$200,000.

- Q. What is the president of the Company referring to as \$800,000?
- A. The two amounts, namely; \$600,000 for the Columbia and Western, and \$200,000 for the Trail smelter.
- Q. It was one agreement, or two agreements?
- A. One agreement. "

345. At page 2076:

" Mr. Mauro: I suggest, Mr. Reid, that the annual statement from which I quoted, that of 1897, sets out, in fact, the intent and nature of this purchase, that the C. P. R. was purchasing the Columbia and Western Railway extending from Robson to Rossland for the sum of \$800,000, and with this property will be acquired the smelting works at Trail Creek and about 270,000 acres, and that subsequently a break-down was made at the time that the Consolidated Mining and Smelting operation came into existence to value the assets of the Trail smelter at \$200,000.

A. That is not true Mr. Mauro."

346. It becomes clear from a study of the agreements in the Annual Report, that, in fact, the purchase of the land and the Trail smelter was all one and the same operation. Subsequently for accounting purposes a break-down in values were made as pointed out, namely; \$200,000 as the value of the Trail smelter, and \$600,000 for the purchase of the Columbia and Western Railway, but in fact the intent and the result of the Crow's Nest Pass agreement was that for the payment of \$800,000 the Canadian Pacific Railway received the interest of August Heinze in both the Columbia and Western Railway and in the Trail Smelter.

347. This was the commencement of the Canadian Pacific Railway's interest in operations in this area of the Kootenays from which very substantial dividends have been received over the years. In the initial stage the Canadian Pacific acquired 25,514 shares of the capital stock of the Consolidated Mining and Smelting, or 54.3%. As of 1958 their holdings totalled 8,412,500 shares at a cost of \$17,460,561, having value representing 51.4% of the capital stock of Consolidated Mining and Smelting. The

market value of these shares as at December 15, 1960 was approximately \$168,000,000. The dividends received by the Canadian Pacific Railway from 1906 to 1959 under investment in Consolidated Mining and Smelting total \$244,606,527 as shown in Exhibit 122 filed by the Canadian Pacific Railway.

348. As a result of the Parliamentary Committee hearings, the Federal Government in 1925 introduced legislation which varied the Crow's Nest Pass Agreement of 1897. The rates on westbound commodities were removed from the operation of the Agreement, while the rates on the movement of grain and grain products to export positions were extended to lines not only in existence in 1897 but to all lines of the Canadian Pacific Railway then in existence and to all future lines of railway. The rates under the Crow's Nest Agreement were protected by statutory limitation on the powers of the Board of Transport Commissioners. The Board of Transport Commissioners extended this level of rates to westbound movement of grain and grain products to Vancouver for export in 1927, and to the Port of Churchill in 1931.

Legal Aspects

349. The Canadian Pacific Railway contends that the Agreement of 1897 came to an end by the amendment to the Railway Act in 1925, and that, in fact, there is not now in existence any Agreement such as the Crow's Nest Pass Agreement, but rather that these rates simply are statutory rates under the control of Parliament. As stated by the witness for the Canadian Pacific Railway at page 1451, Volume 11:

" The 1925 amendment to the Railway Act which was fully implemented by 1927, superceded the rate provisions of the Crow's Nest Agreement and substituted a fixed statutory basis for grain rates moving to all export positions

350. We can therefore assume that up to 1925 the Canadian Pacific Railway

admits the Crow's Nest Agreement of 1897 was valid and existing and that it was by an act of Parliament in 1925 that the Agreement came to an end.

351. We will therefore confine our remarks in this aspect of the argument to discussing whether or not the Act of Parliament of 1925 did, in fact, supercede or rescind the provisions of the Crow's Nest Pass Agreement. We will consider this by viewing firstly the statements of those involved in the 1925 legislation, together with the statements of the parties to the Agreement, namely; the Federal Government and the Canadian Pacific Railway. If the Act of 1925 did terminate the Agreement of 1897, then certainly the Canadian Pacific Railway was the beneficiary of untold advantages and the Canadian people, particularly the citizens of Western Canada, on whose behalf the Dominion Government entered into the contract, received little or nothing from the Agreement.

352. If one recalls that the chief purpose of the Agreement was firstly, general rate control; secondly, the imposition of lower rates on westbound commodities; and thirdly, the imposition of lower rates on grain and grain products moving to export positions, one realizes that the rates on grain and grain products were controlled by the Crow's Nest Agreement for a total period of five years; namely; from 1899 to 1902 and from 1922 to 1925. In the intervening period they were controlled by the competition brought about through the operation of the Manitoba Agreement with the Canadian Northern Railway. For this five year period of reduced rates on grain and grain products, the Canadian Pacific Railway would have received the vast benefits of establishing their monopoly position in southern Alberta and the Kootenays, \$3,600,000 as a cash subsidy, land grants totalling 3,700,000 acres and, indirectly at least, their interest in Consolidated Mining and Smelting Company.

353. It is difficult to believe that the Canadian Pacific Railway would seriously argue that the Federal Government would permit the rescission of an Agreement that would result so clearly in advantage to one party and to the general disadvantage of the people of Canada.
354. The argument is ludicrous on its face. A brief study of the facts surrounding the revision to the Agreement of 1925 and the statements of officers of Canadian Pacific point up that this was never the intention nor the effect of the amendment of 1925. It is important in this context to confine ourselves to a consideration of the statements of the parties at the time rather than using hind-sight to interpret unequivocal statements of parties to the Agreement.
355. The Parliamentary Committee of 1922 was set up to investigate the operation of the Crow's Nest Agreement and its implications on the Canadian economy. The committee recommended that the terms of the Agreement be suspended except in the case of grain and flour moving under the provisions of the Agreement. The Western provinces objected to this decision and appealed to the Governor-in-Council.
356. In order to ascertain the intent of the Canadian Pacific Railway in regard to variations in the Crow Agreement, we will examine the statements made on behalf of the railway during the hearing of that appeal. At page 1642, Volume 12, Counsel for the Province of Manitoba refers to the transcript of evidence of the appeal to the Governor-in-Council in 1924, particularly the statements of Mr. Lafleur, Counsel for the Canadian Pacific Railway:

" Questioned by the Hon. Mr. Graham as to where he wanted these rates to take effect, Mr. Lafleur says: ' From points east of Fort William to western destinations; but you will notice, Mr. Premier and gentlemen, there are three limitations on this reduction -- it is to apply to a specified territory viz. the territory which was in 1890 covered by the lines of the Canadian Pacific Railway; it was applicable as to territory to the then existing mileage because it provides the reduction was to be made on the existing rates on the railway. So it was restricted as to territory. In the next place, it was restricted as to the class of commodities. These were said to be more or less basic commodities, but were far from including all the

basic commodities required in the Prairies, and the third limitation, it was to be, traffic westbound from points in the east to the west. '... ' Now I am not dealing with the grain situation now; I am dealing with the situation as it affects commodities other than grain and grain products, because we are not asking for any change in the conditions established in 1897 in regard to grain and grain products. You will recollect that question was gone into in 1922 when an investigation was made before a special committee and the special committee reported against any change in the grain rates created in the arrangement of 1897, and simply recommended the suspension of the Crow's Nest Pass Agreement in regard to other commodities and it is in regard to these other commodities that we are now making our submission'.

357. It is apparent from the foregoing statement of Counsel for the Canadian Pacific that the Company in 1924 was satisfied with the rates on grain and flour.

358. At page 1645:

" THE ACTING CHAIRMAN: Well, that is to say, Mr. Mauro, whether they were satisfied or dissatisfied, they were not after any change.

MR. MAURO: That is right."

359. Subsequently the Government of Canada introduced legislation in 1925 enacting what are now sub-sections 6 and 7 of section 328 of the Railway Act. This problem is discussed with the witness commencing at page 1654, Volume 12:

" Q. Well, I will read you certain excerpts from the Parliamentary Debates and ask you to comment. I am reading from the Debates of the House of Commons, 1925, Volume 5, page 4309. The Honorable Mr. Graham, Minister of Railways is speaking: ' Now, there are two things that Parliament can do; it can insist on having the Crow's Nest Agreement remain in force in its entirety or it can remove it altogether from the statute books. But a third and middle course might be taken, and we are asking Parliament to remove from the agreement that part relating to westbound traffic, leaving to the Prairies and the West for the future all the benefits they have ever received, and more too, I think, on grain and flour.' "

360. At page 1656:

" Q. I am now reading from page 4313 of the debates:

' Mr. Hoey: There is no reference to the westbound rates on grain and flour?

Mr. Graham: There never was. In this Bill we are sticking to the terms of the Crow's Nest Pass Agreement. I want to explain again that if we started in to make a wholesale tariff for all the different parts of Canada, which is the business of the Board of Railway Commissioners, I am afraid Parliament might not make a very good job of it. Consequently we are sticking to the terms of the Crow's Nest Pass Agreement. We are not making new legislation except in the manner I described a few minutes ago, eliminating that portion of the Crow's Nest Pass Agreement relating to westbound traffic but retaining every item of benefit the Prairie Provinces have had heretofore on grain and flour. Now, let me read the proposed amendment. We have got to the point where all of the traffic but the westbound traffic is still under the Crow's Nest Pass Agreement and the balance is put under the Board of Railway Commissioners."

361. At page 1657:

" Q. And in the statement at the conclusion of the debate by the then Prime Minister, Mr. Mackenzie King, at page 4439:

'In regard to allowing the maximum rates on grain and flour to remain, I would point out to my friends from British Columbia that the Government is not adding restrictions to the Railway Commission, but is rather subtracting from the limitations which the Crow's Nest Pass Agreement had imposed in the protection afforded the middle west. In other words, it is allowing part of that agreement to remain but it is taking away part. To that extent some sacrifice is being required of the middle west, but inasmuch as the Railway Commission is not given a free hand to equalize rates all over Canada regardless of the maximum rates that are being fixed for the middle west, to that extent also some sacrifice is being required of other parts of Canada. I ask, is it possible to gain support for any policy which demands a sacrifice only at one point and not at other points?

In the interests of national unity, in the desire to bring about a policy of equalization of rates, the Government realizes that some sacrifice must perchance be temporarily borne by each of the Provinces. We have sought to make that sacrifice as equal as we can as respects all parts of the country. Now while we are taking away a part of the Crow's Nest Pass Agreement under this arrangement, the Government is extending the security with respect to flour and grain to an area much beyond that which was fixed in the original agreement!"

362. There can be no doubt from perusal of the debates in 1925 that the clear intention of Parliament, with the agreement of the Canadian Pacific Railway, was not to supersede or rescind the Agreement of 1897, but rather to vary that Agreement for the benefit of all parties involved. As stated

by the speakers in the House, both sides were sacrificing certain rights. Certain rights of the prairie producer were being sacrificed while his rights under the Agreement were extended. It was preservation of rights rather than rescission of rights that was the intent of the legislation.

363. The Canadian Pacific Railway, before this Commission has introduced the novel concept that in 1925, by legislation, the rates that had formerly been governed by the Agreement, now became statutory and that Parliament rescinded the Agreement and made the rates statutory. In other words, the Canadian Pacific Railway states that the rates prior to 1925 were governed by the Agreement, while after 1925 they were governed by statute. This is a complete fallacy. The rates from 1897 onward were as much statutory rates as they were subsequent 1925. The 1897 Agreement was meaningless without the enabling statute. This is made clear by reference to the Agreement dated September 1, 1897 and the statute itself which is 61 Victoria, Chapter 5, assented to on June 29, 1897. Reference to the debates of 1925 corroborates the fact there was no change in the nature of the rates from agreed rates to statutory rates. The statements of the Minister of Railways, The Honorable Mr. Graham, clearly illustrates this.

364. If the Crow's Nest Agreement was to be rescinded by the 1925 Act, it is submitted that Mr. Graham and the legal officers of the Federal Government would have repealed the statute of 1897. As Mr. Graham stated, the statute of 1897 was to remain on the statute books. It is as much an agreement and binding in law today as it was the day it was passed, subject only to the agreed revision of 1925. This is further illustrated by reference to the amendments which were in fact adopted in 1925. We refer to Section 328, sub-section 6, of the Railway Act, being Chapter 234 Revised Statutes of Canada, 1952, which reads as follows:

" Notwithstanding anything in subsection (5) rates on grain and flour, shall, on and from the 27th day of June, 1925, be governed by the provisions of the agreement made pursuant to chapter 5 of the statutes of Canada, 1897, but such rates shall apply to all such traffic moving from all points on all lines of railway west of Fort William to Fort William or Port Arthur over all lines now or hereafter constructed by any company subject to the jurisdiction of Parliament."

365. If in fact there was a complete change in the nature of the rates, if there was to be rescission of the Crow's Nest Pass Agreement of 1897, why then would Parliament make these rates in the very amendment itself subject and to be governed by the provisions of the Agreement made pursuant to Chapter 5 of the Statutes of Canada, 1897? Parliament might have stated that the rates would be the same as those contained in the Agreement of 1897. In other words, Parliament might have introduced an amendment which was descriptive of the rates now to be brought under the operation of the Railway Act. On the contrary, the clear and unequivocal language of the amendment states that "the rates after the 27th day of June, 1925 are to be governed by the provisions of the Agreement made pursuant to Chapter 5 of the Statutes of Canada." The rates on grain and grain products moving to export positions were, from their inception in 1897, statutory rates. For anyone to suggest now that in 1925, rates that were previously made by Agreement became statutory, is to fly in the face of clear facts.

366. We have now established that the Crow's Nest Pass Agreement was a valid and binding contract in 1897 and that it was freely entered into by two contracting parties for valuable consideration, and acted upon by both of the parties to that Agreement. Further, that the contract existed to 1925 and it continues, with revision, after that date to the present time.

367. It is important to consider the principle of the contract itself. It would be most unfortunate if this Commission, in an attempt to assist a party

to a binding agreement, should make any recommendation that would do violence to the long established law regarding contractual rights and obligations. This is particularly important in the field of transportation in Canada and more so in the case of the Canadian Pacific Railway who, over a period of years, have entered into many binding agreements with the Federal authority. We would refer to the charter of the Canadian Pacific Railway and the incorporating statute of 1881, the statute which sanctioned and approved of the contract between the C. P. R. Syndicate and the Federal Government of that day. Section 3 of the Statute, Ch. 1, Statutes of Canada, 44 Victoria 1881, reads as follows: -

" Upon the organization of the said Company and the deposit by them with the Government of one million dollars in cash or securities approved by the Government, for the purpose in the said contract provided, that in consideration of the completion and perpetual and efficient operation of the railway by the said company, as stipulated in the said contract, the Government may grant to the company a subsidy of \$25,000,000 in money and 25,000,000 acres in land, to be paid and conveyed to the company in the manner and proportions, and upon the terms and conditions agreed upon in the said contract, and may also grant to the company the land for right of way, stations, and other purposes and such other privileges as are provided for in the said contract."

368. In addition to the foregoing, the Canadian Pacific Railway was granted freedom from taxation in perpetuity in the western regions of the country; freedom from duty on items to be brought in to the country for the construction of the railway; freedom from taxation for stations, rights-of-way, and various other benefits. There has been no suggestion in these proceedings that this contract, freely entered into by the Federal authority and the C. P. R. syndicate, should in any way be infringed, restricted or varied, particularly if the infringement or variation were to react to the detriment of the Canadian Pacific Railway.

369. We also refer to the contract entered into between the Canadian Pacific

Railway and the City of Winnipeg which has received judicial notice on more than one occasion. This case is particularly applicable to the inquiry before this Commission, since the Canadian Pacific Railway and others have constantly referred to the fact that the great inequity in the Crow's Nest Agreement is that it has committed the Canadian Pacific Railway to carrying grain at rates established in 1897. Do they seriously suggest that a binding agreement become less obligatory with the passage of time? The Canadian Pacific Railway has continually resisted any attempt on the part of the City of Winnipeg to rescind the agreement of 1880 and has challenged the argument of the City of Winnipeg that the City could have had no appreciation when they entered into the contract of the monetary loss to the City 80 years later.

370. The analogy applies to the arguments of the Canadian Pacific Railway in 1960 in relation to the Crow's Nest Pass Agreement of 1897. Granted the assumption that a valid contract was entered into in 1897 and that there still exists a valid and binding agreement, the Canadian Pacific contends that the terms of the Agreement have become so onerous in 1958 as to require relief. A Court of Equity might properly relieve one of the contracting parties from the operation of specific terms of an agreement which prove to be unjustly onerous. The question that presents itself is therefore: When did the contract of 1897 become unjustly onerous to the Canadian Pacific Railway?
371. Clearly it was not unjustly onerous in 1902 because at that date the Canadian Pacific Railway voluntarily reduced the rates for the movement of grain to export positions as a result of the Manitoba Agreement and those rates remained in force until 1918. The Agreement and its application to the rates on grain and flour were not considered unjustly onerous in 1924 since Counsel for the Canadian Pacific Railway, appearing before the Governor-in-Council, stated categorically that the railway was seeking no revision in the rate structure on the movement of

export grain.

372. The terms of the Crow's Nest Agreement were not unjustly onerous as late as 1938 because in that year the President of the Canadian Pacific Railway, speaking to the Senate Committee stated;

" Sir William Van Horne made an agreement with the Government for the Crow's Nest Pass rates. A great many people criticized that because they said he only got 3 million dollars-odd in the way of subsidies for building that line, and in consideration of that he made this very drastic reduction on grain rates and certain other commodities westbound. I have always thought Sir William Van Horne was one hundred per cent right. He knew the geography of this country; he knew where our competition would come from and he knew our only salvation in the markets overseas was low freight rates in Canada, in view of our distances. I think he went into that with his eyes open and undoubtedly made a good bargain. I think he made a good one, both for the country and the railways, and that must have been the influence that actuated him in that matter."(44)

373. At some indeterminable date between the statement of Sir Edward Beattie in 1938 and the submission of the Canadian Pacific Railway to the Turgeon Royal Commission in 1949, the rates on grain and flour moving to export in Western Canada became unjustly onerous to the Canadian Pacific Railway. However, even at this latter date, this independent tribunal, the Turgeon Royal Commission, stated:

" It is assumed in this presentation by the Canadian Pacific Railway Company that the Crow's Nest Pass rates on grain and flour have always been a burden either upon the railways or upon the shippers and consignees of other commodities.

The Company's assumption in this respect is not borne out by the facts. During the first period in the history of the Crow's Nest Pass rates, that is, from the coming into force of the Agreement of 1897 up to 1918, these rates cannot be said to have been a burden on anybody. After having been in effect for about four years, they were reduced by the Company itself in 1903 to the lower competitive level already referred to which remained in force for about fifteen years, that is, until the competition came to an end in 1918. These competitive rates would have prevailed throughout this long period even if the Crow's Nest Pass Agreement had never been made. Then followed the period of suspension ending in July 1922, during which, of course, these Crow's Nest Pass rates were not in

effect."(45)

378. At page 244. of its Report in regard to the matter of burden, the

Commission states:

" In dealing with this subject ... the Commission has adopted the language generally used in discussing it and which, by repeated reference to the Agreement of 1897, conveys the idea that the matter is still essentially one of deciding whether or not the Canadian Pacific Railway Company should continue to be bound by a contract which, in its opinion, has become unreasonably onerous."

379. At page 252:

" On the whole therefore no justification can be found for the statement that the exemption of the Crow's Nest Pass rates causes an undue burden upon shippers as a whole or upon any particular class of shippers. The application made for the increase in rates argument cannot be entertained.

There remains the question of the railways themselves. Is there any reason why they should be indemnified against whatever additional burden they may suffer by reason of this exemption from increases of the Crow's Nest Pass rates? It is not easy to see what case can be made out for them in this respect. If the Crow's Nest Pass rates were made subject to general increases the ratio of the increases would go down. In any case the statement made by the Canadian Pacific Railway Company is to the effect that since 1922 the greater burden of the Crow's Nest Pass rates deficiency is borne by other shippers. This statement implies that there is really not much to be said against these rates in respect to their effect upon the railways."

380. Therefore, up to the date of the findings of the Turgeon Commission in 1951, the railways were unable to prove that there was any unjustly onerous provision in the Crow's Nest Pass Agreement that would warrant either rescission of the Agreement or assistance from the other contracting party to relieve against the operation of that Agreement.

381. Eight years later, before the present Commission, the Canadian Pacific Railway contends that the cost of the movement of grain to export positions is so far below returning out-of-pocket costs as to impose an unfair burden on both shippers and carriers. The onus

is therefore on the Canadian Pacific Railway to show cause why this Commission should come to a different conclusion than that reached by the Turgeon Commission eight years ago.

Railway Cost Study

382. We now turn to consider the evidence presented. The Canadian Pacific Railway called three witnesses: Dr. Ford K. Edwards, Mr. C. W. Smith, and Mr. J. Stenason. Dr. Ford K. Edwards, an experienced and much respected cost analyst from the United States, was called on behalf of both Canadian railways for the purpose of approving the basic approach used by Messrs. Stenason and Bandeen in the cost studies submitted. Dr. Edward's sole function in appearing before the Commission was to give an aura of respectability to costing techniques which he himself had not utilized to any extent and which in their present form, while novel, are as yet unproven.
383. There are three basic concepts which are essential to the validity of the Canadian Pacific cost study. If any of these conceptual approaches are suspect or faulty, then it is submitted that the study resulting therefrom is itself suspect or faulty. These three "building blocks" are:
- multiple regression technique as a costing device,
 - solely related facilities and
 - fully distributed costs as a basis for rate making.
- It is our submission that the study submitted by the Canadian Pacific Railway while interesting, is nothing more than another study. It should be treated in the same way as that submitted by the Canadian Pacific Railway to the Turgeon Commission in 1949. While the study is an interesting indicator of what the possible costs might be, it does not in any way represent the true or only cost for the carriage of grain to export positions. We will support this submission by reference to the examination of the witnesses called by the railway.

Multiple Regression as a Costing Technique

384. Dr. Edwards, in reply to a question by Commissioner Platt at page 2706, Volume 19, states:

" Regression analysis here as used in this study primarily relates to the maintenance of way accounts. I believe some 37 per cent of the expenses involved were handled this way."

385. At page 2707, in reply to a question by Mr. Sinclair as to the appropriateness of regression analysis, Dr. Edwards stated:

" Yes, the use of regression analysis, particularly with multiple variables where appropriate, has resulted in an accurate determination of the variable costs associated with the study traffic. The use of regression techniques, applied to road maintenance accounts, has given the cost studies of Canadian National and Canadian Pacific a marked advantage over studies not using these techniques."

386. At page 2706, question by Counsel for the Canadian Pacific Railway:

" Q. Yes, what about the models used by the railways in the regression analysis in their cost studies? What is your comment on them ?

A. The models used in the regression analysis by Canadian National and Canadian Pacific were suitable and meet accepted tests. The independent variables used in the various analysis were, in my opinion, correct and take into account cost relationships to the various output units which needed recognition."

387. The inference from this direct examination was that multiple regression techniques had long-standing validity in costing circles and more particularly that the studies made by the Canadian Pacific and Canadian National Railways were beyond reproach in their use of this technique. Dr. Edwards' position was not so certain or categorical under cross-examination. Counsel for the Province of Manitoba, commencing at page 12699, Volume 71 dealt with multiple regression technique and its acceptability by the Interstate Commerce Commission and costing experts in the United States. Counsel discussed with

Dr. Edwards , testimony in other cases in which his position had been considerably different from the dogmatic assertions before this Commission.

388. At page 12729, Volume 72:

" Q. The next reference I would bring to your attention is that of Docket 31503, Exhibit T 635, witness Ford K. Edwards, The Transcontinental Divisions case. I am reading from page 18 of your exhibit;

'The reason for the unrealistic results produced by the Meier-Gepfert calculations appears from the assumptions inherent in multiple regression calculations, and the failure of the data upon which the calculations were based to comply with those assumptions. One of the fundamental assumptions underlying the use of multiple regression is that the so-called independent variables are independent. Thus, when total maintenance costs are expressed as a function of gross ton-miles and miles of track, the gross ton-miles and miles of track are assumed to be independent; that is, one is not the function of the other. If this assumption is not correct, then the least squares calculation becomes either impossible or meaningless, depending upon the degree of correlation or lack of independence...If the relationship is not perfect but there is, nevertheless, a strong linear tendency, it is then possible to go through the mechanics of the least squares calculations and arrive at arithmetical values. The values so resulting, however, are said to be unstable and are often quite meaningless, and this is the case with the Meier-Gepfert calculations'."

389. At page 12730:

" For these 19 Midwestern roads the co-efficient of determination between miles of track and gross ton miles is .89. This means that 89 per cent of the variation in gross ton miles is explained by the variation in miles of track. With such a strong relationship between variables assumed to be independent, it is not surprising that the multiple regression results are meaningless.

The 95 per cent confidence intervals shown for the Midwestern roads on sheet 1 of Witness Gepfert's Exhibit MW-531 range from minus values to plus values. This means that the constants per mile of track contained in these regression analyses are not significantly different from zero. Whatever answer is obtained, whether plus or minus, is more of an accidental nature than a meaningful figure.

"Q. I assume that the general analysis that you have submitted there, Dr. Edwards, in regard to the multiple regression calculations and the need to assure oneself of independence, real independence, still applies today, but you would apply this criterion and this check in assessing any multiple regression coefficients to determine whether or not they were really independent before accepting as meaningful or statistically significant the results of those regressions?

A. That is right.

390. At page 12741 the witness explains his first contact with Messrs. Stenason and Bandeen and his advice to them:

"Q. Now, in your statement in the Trans-continental Divisions case you mention this figure 95 per cent confidence, and I wondered whether you would tell this Commission what you, as a most experienced man in this costing field, would accept as the limit of confidence, the standard of error, the point at which you would hold that a result was sufficiently insignificant or significant? Would you accept the 5 per cent standard error or 95 per cent confidence interval, or would you accept nine per cent or eight per cent? What is your range, Dr. Edwards?

A. When I came to those tests, as I have explained, I first got some good men around me, sat down with them and had them tell me -- in the Divisions case we ran many, many regressions, tested many models. Those models all came to me, and when they came to me, why we sat down with the men that had prepared them, and our advisers, and analyzed them as to their tests of significance; but the 95 per cent and 5 per cent factors you mentioned are commonly used, I know and used them."

391. At page 12743:

"Q. I say a man of your past, Dr. Edwards, would not accept a coefficient at the 90 per cent level as suggested by Mr. Stenason -- I mean what I say --- because I have that respect for you, because it would be intellectually abhorrent to you to take a coefficient factor with that margin of error at 90 per cent level?

A. Well, you really put me on the spot, because I have been making cost studies for twenty-five years all over the country that had wide acceptance, and it is only in the last couple of years or so that we began using these tests. So that when you say I

would have backed away from this, we did not have multiple regression until IBM brought in the 650's in the last year or two, so in my past work we used simple regression on a vast scale by individual accounts isolating the expenses on the same railroad, on railroads of different densities; and out of that came this 80 per cent variability per cent 80 to 90 which we have used at the 80 per cent level.

Now, when you said I would never have used this confidence limit that you speak of, obviously I did not always have it at hand."

392. In direct examination Dr. Edwards inferred that the techniques utilized by the Canadian Pacific Railway were in accordance with long standing methods utilized by himself and other costing experts. Under cross-examination he admits that in the twenty-five years that he has been involved in the field of costing, he has only utilized multiple regression in the last couple of years. In fact, this technique was largely experimental in his own mind when he was first approached by Messrs. Stenason and Bandeen in January, 1959.

393. At page 12745:

"Q. Yes, it is rather coincidental, as a matter of fact, Dr. Edwards, that in this exhibit, when I was discussing it with Mr. Stenason, he told me that he rejected any arbitrary statement of the five per cent significance and there were certain coefficients significant at the 10 per cent or at the 90 per cent confidence interval, and in this very exhibit (Transcontinental Division case) at page 18 you said:

'For these 19 Midwestern roads the coefficient of determination between miles of track and gross ton-miles is .89. This means that 89 per cent of the variation in gross ton-miles is explained by the variation in miles of track.'

In other words, at the 89 per cent level. 'With such a strong relationship between variables assumed to be independent, it is not surprising that the multiple regression results are meaningless.'

So that in that exhibit you properly, through the instruction of your adviser, have rejected as meaningless co-efficients and variables that resulted within one per cent of what Mr. Stenason has said he has accepted, and you go on to say that you would accept as your minimum requirement of confidence, the 95 per cent interval of confidence or the 5 per cent standard of error?

"A. I think it explains it. "

394. At page 12748 Counsel for Manitoba referred to another case in which Dr. Edwards had given evidence, I.C.C. Docket 31503, cross-examination by Mr. Freeman at Washington in April, 1959, Volume 40, pages 9248 to 9250 of the I.C.C. Docket:

- "Q. Does it raise statistical questions, questions of the statistical reliability of the procedure?
- A. It raises questions as to the practical meaningfulness of the data.
- Q. But not technical statistical questions?
- A. Oh, I had no question on the technical questions involved -- technical applications of the formula.
- Q. From your standpoint is the standard error for the 14 Transcontinental Defendant roads of \$176 under Equation "A" a satisfactory standard error?
- A. Well, I would say it is still a substantial range in the confidence intervals.
- Q. That is, you do not regard it as satisfactory?
- A. Well, it is hard to take this data and qualify it or characterize it as satisfactory or unsatisfactory. These tests are measured as an approach to a problem -- a theoretical statistical approach to a problem that can be helpful and can be appraised, but they certainly have to be appraised in the light of practical observations."

395. At page 12749, still referring to his evidence in the above I.C.C. Docket, Counsel quotes Dr. Edwards:

" I was intrigued by the subject at that time (multiple regression), I might say, I went over to American University and took a course of correlation analysis, which was a difficult course.

When I got through with the course I took my problems to the instructor, in the Ways and Means of the Cost Section we were arriving at per-cent variable, and explained them to him. and asked him if there was possibility that we could abandon those practical observations, or the behaviourism of observed data for roads having different density levels, and turn for primary reliance on mathematical correlation analysis.

His advice to me was I should keep on relying on the type of data we were using. This other provides possibly supplementary

approach, but the other gave results that made sense -- I mean the approach we had followed -- and is why I have relied basically upon that in my own reasoning. I have to be able to rationalize the result. I wouldn't trust any statistical device that I couldn't independently check by plain observations from current data reported in the accounts and in the statistics."

396. At page 12753:

" Q. Yes, well this evidence in April 3rd, 1959, and on that date when my learned friends were in the process of conducting their examination of the grain study of the Dominion of Canada, you told Mr. Freeman in Washington, ' His advice to me was I should keep on relying on the type of data we were using. This other provides possibly supplementary approach, but the other gave results that made sence -- I mean the approach we had followed -- and is why I have relied basically upon that in my own reasoning. I have to be able to rationalize the result. I wouldn't trust any statistical device that I couldn't independently check by plain observations from current data reported in the accounts and in the statistics. '

I suggest to you, Dr. Edwards, that that is, in fact, your opinion today, that you are distrustful of statistical devices that do not conform to observed data, and this is the position you would want to place before the Commission?

A. No, I am not distrustful of statistics. I take statistics and --

Q. I think you are misunderstanding my question.

A. You put more into my mouth than I said.

Q. I am not saying you distrust statistical devices. I said you distrusted statistical devices that do not conform to observed data. My question was, in reference to this, that -- ' I would not trust any statistical devices that I couldn't independently check by plain observations from current data reported in the accounts and in the statistics. '

A. No, I don't distrust multiple regression, and I have used it, and in the Transcontinental Divisions case we used multiple regression analysis, but my experience has been throughout on my cost work that when anyone passes me a figure -- when my own staff passes me a figure -- it must comport in some degree with my own knowledge on the subject, because I have been running simple regression for 25 years, and when multiple regression came in it would be hard for me to

understand suddenly that all our simple regressions based on the accounts broken down through the accounting process rather than relying on multiple regression, that the two should harmonize, and I would say that the results do harmonize."

397. Commissioner Mann with reference to Docket 31503 asked

Dr. Edwards at page 12754, Volume 72:

" Today, do you perhaps feel that observation is supplementary to multiple regression tests?

Witness: No, I would not say that."

398. There was a marked change in the thinking of Dr. Edwards

from April, 1959, to December, 1959 when he gave his evidence before this Royal Commission. It is interesting to note that at the time he presented his evidence to the Interstate Commerce Commission in the above Docket in April, 1959 he had already been retained by the Canadian Pacific and Canadian National Railways to advise them on their cost study. A perusal of the testimony of Dr. Edwards, under cross-examination, establishes that as late as April 1959, he himself had grave doubts as to the applicability of multiple regression technique, particularly where the results did not coincide with his own observed data.

Solely Related Facilities

399. The Canadian Pacific Railway has listed extensive trackage in Western Canada which they have arbitrarily determined to be "solely related" facilities. The costs attributable to this mileage are charged to the movement of grain. At page 2741, Volume 19, Dr. Edwards discusses this concept, and at page 2742:

'Q. Now, what about branch lines?

A. Branch lines, the existence of which was occasioned by movement of any particular category of traffic, have been costed as solely related to the traffic involved. This procedure was followed before the Interstate Commerce Commission in the Southern Governors'

Grain case; in Re Fresh Vegetables from Texas, California, Arizona, and New Mexico; and in Re Transcontinental Divisions."

400. The inference is that the Interstate Commerce Commission in the cases cited had adopted this concept of solely related facilities in regard to branch line operations, but under cross-examination at page 13043, Volume 74, it becomes clear that only Dr. Edwards had adopted this concept in the cases cited.

- " Q. Now, we will take them one at a time, Dr. Edwards. Who followed this procedure in the Southern Governor's case?
- A. It was followed by the grain roads, and I was the witness for the grain roads.
- Q. And what was the decision in that case?
- A. We haven't had the decision yet.
- Q. Who followed this procedure in the Fresh Vegetable case?
- A. It was followed by the Trans-Continental roads, and I was the witness again.
- Q. And what was the decision?
- A. The decision is still pending. It was followed in the Trans-Continental case on behalf of the Trans-Continental roads, and I was the witness in the case.
- Q. And what was the decision?
- A. We have not yet had a decision."

401. The truth of the matter is that it was Dr. Edwards rather than the I. C. C. that had followed this principle in each of these cases, that the concept was strongly opposed in each case and that to date no decision has been reached in any of the cases.

402. At page 2741, Volume 19, the witness Edwards details the conceptual approach to solely related facilities:

- " The variable expenses of handling any given study traffic include all expenses incurred as a result of the movement of such traffic. Included in these variable expenses are not

only fuel, wages, car repairs and similar items, but also the cost of maintenance and investment and fixed plant facilities, the existence of which was occasioned by the study traffic. To illustrate, the cost of fixed facilities for the platform handling of LCL freight have been treated as solely related to the handling of LCL freight. I am here referring to cost studies in the United States. Coal and ore dock facilities have been treated as solely related to the coal and ore movement, that is variable with the total movement of that particular traffic for which it is utilized. The principle of charging the cost of such fixed plant facilities as a variable cost of handling the study traffic requiring such facilities has been recognized by the Interstate Commerce Commission cost staff and provision has been made in standard costing forms for such treatment. "

403. It is important to clarify the practice of the Interstate Commerce Commission in this regard because the evidence of Dr. Edwards in this instance as in the case of his testimony regarding multiple regression might lead one to conclude that the Interstate Commerce Commission Cost Section makes provision for the costing of solely related facilities in relation to branch lines. Such a conclusion is erroneous. The Cost Section of the Interstate Commerce Commission recognizes the solely related concept as a general proposition but imposes two conditions which must be met in the application of this concept. One, that the solely related constant expense be eliminated entirely with the elimination of a specific service and Two, that the facilities or service be exclusively used for the traffic involved. The Cost Section in their studies used as an illustration the constant portion of expenses attributable to L.C.L. freight houses since freight houses could be eliminated if the entire L.C.L. service were eliminated, and in addition, L.C.L. freight houses are used exclusively for L.C.L. freight.

404. Schedule 1, sheet 4, footnote 3 of Rail Form A provides:

" The solely related expenses are those expenses which while not variable with individual units of traffic handled, nevertheless could be eliminated entirely if

the entire service were eliminated. For example, the constant portion of the operating expenses, taxes, and return attributable to the operation of L.C.L. freight houses, could be eliminated if the entire L.C.L. service were eliminated. Such constant costs need not be considered in determining the out-of-pocket costs of a single shipment or movement. On the other hand, they should be considered in determining the out-of-pocket cost of rendering the complete L.C.L. service. Such solely related constant costs have the characteristics of constant costs generally, in that they cannot be directly assigned to particular L.C.L. movements. It is important to note that only the expenses for carload and L.C.L. platform work are treated as being solely related to carload or L.C.L. The freight house platform facilities, excluding those used in connection with transfers, are as a rule used exclusively for L.C.L. traffic."

405. The first problem that confronted Dr. Edwards was that of defining a branch line; nowhere in the record is this requirement satisfied. On an arbitrary basis determined by the Canadian Pacific Railway certain lines were separated from the main rail operation and designated as branch lines. Having arbitrarily segregated the lines deemed to be branch lines, the railway devised an arbitrary test to be applied in determining whether or not they were solely related. The complete inconsistency of Dr. Edwards' reasoning appears at page 13042, Volume 74:

" Q. Now, you have related these, you have referred to various facilities that have been treated as being solely related in I.C.C. cost procedures, namely coal and ore dock facilities and the platforms for handling L.C.L. freight. What similar facilities are solely related to the handling of grain in Canada?

A. The branch line trackage on a solely related facility.

Q. You are not going to classify a branch line on a fixed cost, the same as an ore dock or the same as a platform for L.C.L. freight handling?

A. I am, indeed. When these principles were enunciated by the cost section back in 1941, there are additional references beyond coal and ore dock stating that the same principle applies to branch lines.

Q. The I.C.C. has set forth that the same principle that applies to coal and ore dock and platforms on L.C.L. freight-handling applies to branch lines. Is that what you have just told me?

A. Yes. That was in an exhibit introduced by myself back in 1941, when we were laying out these principles. That is in documents, introduced in Docket 28300. "

406. There is in fact no such principle established by the I.C.C. Cost Section. The principle upon which the concept of "solely related" is applied, if applied at all, is as above stated: that the solely related constant expenses can be eliminated entirely with the elimination of the specific service, and that the facilities be exclusively used for the traffic involved.

407. Dr. Edwards was fully aware of this when he appeared before this Commission, he was fully aware that in the most recent case in which he appeared this same concept was vigorously attacked on the basis which we discussed with Dr. Edwards. At page 13047 reference was made to Dr. Edwards' statement in direct testimony:

"'Branches which would not be economic but for the existence of the study traffic are solely related to the study traffic except where required for operational reasons'.

Q. ... I am not referring to that part of the sentence, 'except where required for operational reasons.' The first part of the sentence reads: ' Branches which would not be economic but for the existence of the study traffic are solely related to the study traffic.'

My question is, branch lines which would otherwise be uneconomic are presently economic, according to this, because of the study traffic, because without the study they would be uneconomic. Branches which would not be economic but for the existence of the study traffic are solely related to study traffic. Branches which would not be economic but for the existence of the study traffic. Therefore branch lines which would otherwise be uneconomic are presently economic

because of the study traffic.

A. Yes, sir.

Q. And your policy, therefore, of the solely relatedness would penalize this economic traffic by fixing to it additional costs of operation for maintenance and overhead on your solely related?

A. I am not trying to penalize anything or any traffic, I am just trying to look to the recovery of the fixed costs associated with that traffic in the handling of that traffic on the branch."

408. At page 13050:

" Q. Therefore, I have asked, that a shipper on a branch line would be wise to keep his traffic at a level which would make the line uneconomic, because as soon as his traffic leads to an economic line he may be required to pay not only the cost of moving his traffic but the deficiencies of any other traffic moving on the line; that if a line were able to handle lumber in Northern Ontario ... that that was at least the initial reason for it -- and then a saw mill or some other type of processing established itself or a mine, and the first purpose for which the line was built ceases to exist, the second fellow may find himself not only paying the cost of moving his own traffic but any deficiency caused by any other traffic utilizing that line.

A. Well, the other traffic does not create a deficiency. It is generating under its rate structure, which may be high or low, whatever it can yield through that, but that residual burden, if the line is to be maintained, must fall upon the economic traffic, if the line is not to be torn up.

Q. So that where the railways have lost traffic to other media of transportation, the remaining captive traffic must pay?

A. If that line is to be supported by the traffic that uses the facilities, and requires the facility."

409. The branch line problem as it applies to the Canadian Pacific Railway is not created by the handling of grain. The grain traffic is carrying whatever burden it is capable of carrying in the rate structure and making its fair contribution. The problem for the Canadian Pacific

Railway, if a problem exists, is that it has been unwilling or unable to compete with the other modes of transportation and retain sufficient traffic to justify the branch line facilities.

410. At page 13051, Commissioner Balch asked Dr. Edwards if the elimination of the study traffic would result in discontinuance of branch lines:

" A. Yes, then every branch line we are talking about would be a branch line that should be abandoned forthright.

Mr. Mauro: Would you not be discontinuing an economic line then, because you say that these lines would be uneconomic except for the study traffic? You've told us that it is the study traffic which makes these lines economic, and you would not discontinue an economic line, would you?

A. I would not discontinue an economic line, no, but I would expect, in costing the traffic of that line that is responsible for the existence of the line to recognize the burden of the cost and costs present in that line."

411. The witness found himself in the unfortunate position of recommending that either economic branch lines be abandoned, which must reflect on the revenues of the railway or of penalizing what is presently economic traffic. Either approach is completely inconsistent with the position of Dr. Edwards regarding the penalizing of economic traffic on branch lines.

412. At page 13072, Dr. Edwards' difficulty in reconciling his impossible position becomes apparent. Dr. Edwards had stated:

"'That the grain traffic should properly bear its economic share of the full costs of operating all of the branch lines on which it moves, including those not solely related to grain. Value of service conditions considered, grain traffic should not shift the overhead cost burden on such branch lines entirely to other traffic moving thereon or to traffic generally.'

Mr. Mauro: --- I think it pretty well states what you have been telling us here, that in your approach to these problems... in addition to the out-of-pocket costs, such traffic on solely related lines should bear the constant?

A. Yes.

Q. Now, as I understand this

position, Dr. Edwards, you contend that branch lines exist to service traffic that originates and terminates on those lines?

A. That is right.

Q. And that the cost, both variable and fixed, of operating and maintaining these lines must be borne by the traffic using the lines in question?

A. That is right.

Q. And that unless this is done a burden is placed on other traffic?

A. That would be right.

Q. Now, I thought we would try to apply this to the Canadian scene, and we will start in the Maritime region. I assume that the rail lines in the Maritimes region are there for traffic that originates or is destined to the Maritimes, and unless this traffic bears its fully distributed cost then a burden is placed on other traffic?

A. I don't know of any solely related branches in the Maritimes. If there are solely related branches there, that would be the case.

Q. I am trying to go to the heart of the concept itself, that where there is a line and the purpose of the line is to service traffic that originates and terminates on that line, and that unless the traffic which originates and terminates on that line bears its fully distributed cost it places a burden on other traffic. That is actually the basic philosophy behind it, in its simplest terms. The thinking is if they have a line of rail that rail line is there to service the traffic that uses the line.

The Chairman: That is all the traffic.

Mr. Mauro: And unless all the traffic that uses that line can meet its fully distributed cost, then a burden is placed on other traffic?

A. That would be so.

Q. So taking the Maritime region of Canada, we have extensive rail facilities in the Maritime region; and the only purpose of those rail facilities in the Maritime region is to service traffic that originates or is destined to the Maritimes, and unless it provides revenues which cover the fully distributed cost of maintaining and servicing that rail line, there is a burden

put on other traffic.

A. That would be true.

Q. And then the lines in the Province of Quebec, moving westerly, were similarly constructed for traffic which originates and terminates in the Province of Quebec, and unless the rates charged in the Province of Quebec return full cost, a burden is placed on other traffic.

A. Yes, a burden is placed on other through traffic.

Q. And that can continue through Ontario, Manitoba, Saskatchewan, Alberta, British Columbia, that the lines in those provinces were constructed to service the traffic which originates and which is destined to that area, and unless rates in those provinces meet fully distributed costs, a burden is placed on other traffic?

A. Are you talking about branch lines or through---

Q. I am talking about all traffic.

A. On all lines?

Q. Yes, on all lines, because under the requirements formula whatever, is not picked up by one traffic, if costs increase and fully distributed costs are not covered in those areas, a burden is placed on other traffic to pick it up.

Chairman: On all branch lines.

Mr. Mauro: No, on all lines.

A. Well, I have never conceived that solely relatedness being applied to the main lines. I have looked at the separable facilities. When you are talking about the main lines, it is like cutting a dog in three pieces--the parts can't live, presumably. So it is the variable parts of the operation I have treated that way. But the entirety of the burden must be met in the sum total constant cost.

Q. There is a totality of burden. Take the Canadian Pacific Railway. There is a totality of burden, and this totality of burden is distributed over all of the traffic; is that correct?

A. That is correct.

Q. And a certain traffic over certain lines, without restricting it to the branch line, does not return its fully distributed cost to the extent it fails a burden is placed on other traffic if the C.P.R. is to recover this totality of burden.

A. Well, strictly speaking, no; for the reason that if any traffic fails to recover its fully distributed cost it is necessarily burdening other traffic -- that goes back to the question of value of service on that traffic and if it is contributing, making its maximum contribution, its elasticity of demand for transportation considered, then it is not burdening other traffic."

413. The inconsistency of this approach is illustrated by the evidence commencing at page 13078 where Counsel for the Province of Manitoba discussed Dr. Edwards' definition, and with reference to the Maritime region suggested that the lines in the Maritime region were there and were constructed to service traffic originating and destined to that region. The witness agreed that this was the case with these lines. Counsel then suggested that these lines, if they were not meeting the fully distributed cost of providing the service, were, in fact, a burden on other traffic if one applied Dr. Edwards' philosophy of solely related facilities. Counsel applied the same reasoning to the lines existing in Quebec and Ontario, in the Prairie region and in British Columbia respectively. The only answer that Dr. Edwards could give to this obviously absurd situation was at page 13078: -

" A. Well, I have never carried it that far, to say that the fact that they did not cover the solely related cost was burdening other traffic. If they maximize their contribution as a whole, I have never carried that into slicing up the railroad into pieces, sectional pieces. I think it is one big frame. What do you want me to think?"

414. The Province of Manitoba does not want Dr. Edwards to think anything. We are attempting to follow through his reasoning on this matter of the costing of grain. The witness has attempted in the case of the study traffic to sectionalize or dismember the Canadian Pacific system by arbitrarily cutting up into sections those lines which he deemed to be solely related to the study traffic. There was apparently no difficulty

in the mind of Dr. Edwards and of the Canadian Pacific Railway cost experts in deciding which lines could be severable from the main plant for this costing operation, but there is great difficulty when the concept is applied generally to the Canadian Pacific system across the Dominion. In a final attempt to give some rational explanation for this inconsistency, Dr. Edwards states at page 13080: -

" Well, fundamentally, Mr. Mauro, I have looked upon all these branches as variable. I have looked upon them as broadly and conceptually as variable in the way the train crews or fuel might be variable, in that these lines might be dispensed with. The branch lines might come and go as fuel or train crews might come and go."

415. Dr. Edwards found himself faced with a dilemma. Either, as he admits, the concept applies consistently, which would result in the dismemberment of the Canadian Pacific Railway system, or alternatively in the penalizing of shippers of particular commodities because of deficits in branch line operations, whether or not those shippers do, in fact, utilize branch line services.
416. At page 13081, Counsel for the Province of Manitoba chose the example of a lumber operation on a branch line in British Columbia and another lumber operation situated on a main line in British Columbia. He posed the question that if it became apparent that the branch line was solely related to the movement of lumber and should be required to pay higher rates, why should the lumber operator on the main line be penalized by having to pay higher rates on his commodity even though the movement of his commodity apparently was not solely related to the main line nor had it occasioned any increased cost. Counsel suggested to the witness that if he were to be consistent and equitable, the real method of solving his so-called "solely related branch line problem" would be by a method of branch line arbitraries rather than affixing to the complete commodity movement additional cost not warranted by the movement of the traffic as a whole. Dr. Edwards replied that he had given no consideration to this.

417. It is respectfully submitted that Dr. Edwards has not given full consideration to the implications of this theory. The fact is that branch lines as such cannot be properly segregated. The witness attempted to utilize the abandonment theory regarding branch lines and apply a similar test to his solely related theory. The abandonment test is not the solely related test. The Interstate Commerce Commission on numerous occasions and in their published periodicals has pointed out that they are not the same. In the case of branch lines the abandonment theory of 50% of the traffic has been established over a considerable period of time and is generally applied in these applications. In the case of solely related facilities the two qualifications which we have set out above are those applied by the Interstate Commerce Commission; namely, that the total constant expense could be eliminated by the elimination of the service, and secondly that the service is exclusively used for the traffic involved.
418. In the case of the Canadian Pacific, branch lines have never been defined. They are a part, and an integral part, of the Canadian Pacific system. They were constructed on the basis of decisions of management as light-carrying lines feeding traffic into the transcontinental system and providing traffic for these main trunk lines moving east and west in Canada. If it were not for the branch lines into the various localities in Canada, traffic otherwise destined to or from those localities would move by some other form of transportation and traffic originating in these localities destined for areas in other parts of Canada would move by some other form of transportation. The branch lines, from their inception to their present day operation, are in fact, an integral part of the over-all rail operation.
419. In this regard we would refer to the statement of the Executive Vice-President of the Canadian Pacific Railway, one who can speak with

authority on this matter of branch line definition and operation.

At page 18752, Volume 113, we were discussing the matter of the Manitoba proposal on Branch Line Maintenance Fund and the witness states: -

" As to the fact that there is implicit in the Manitoba proposal cross-subsidization between branch lines and main lines, -- that is the fact of life. It cannot be otherwise in the nature of things.

The alternative to that, would, of course, be a scale of rates that were higher on branch lines than on main lines which has generally been regarded as repugnant and the trend in recent years has been quite in the opposite direction. But, if you want to avoid cross-subsidization, that is the sort of system you would have to have, and I do not think it would meet the situation at all. There seems to be a concept that branch lines can be divorced and separated from main lines and that you put one in one category and one in another category. I do not think that is a realistic way to look at the situation, if I may say so. The fact is that branch lines and main lines are all part of the railway system. The difference -- and it is only the difference in degree -- is that the main lines are the through traffic handling arteries while the branch lines are the traffic originating or in some cases, terminating limbs, if you like ...

Some branch lines in addition to carrying the traffic which originates or terminates, carries some through traffic. So, there is no clear and sharp distinction."

Just and Reasonable Rates

420. This problem is perhaps the most important aspect of the submission of the Canadian Pacific Railway. The railway's attempted to establish on the basis of cost data the returns from statutory rates towards "out-of-pocket costs", and "fully distributed costs", and to establish what the rate should be for the carriage of grain to export positions. Its importance in the context of the Commission's work is that this evidence forms the basis for the rate that the railways claim is just and reasonable for the movement of grain to export positions. For the present the railways are suggesting that the difference between the

present rates and the proposed rates be met from the Federal Treasury. Regardless of the method of compensation proposed by the railways, it is these rates that the railways are demanding from the Western Canadian farmer.

421. The Canadian Pacific Railway submitted cost figures setting out the out-of-pocket or variable costs of carrying the traffic, and suggested that in the case of the movement of grain they should receive for their services not only their variable costs or a specified percentage above their variable costs, but rather the fully distributed cost of providing the service.

422. At page 2457, Volume 17, in direct examination of Mr. Stenason:

" Q.

Could we come back to the relationship of the revenues and costs on a ton-mile basis?

A.

The revenue per ton-mile is .5 cents. The variable cost is .74 cents, which makes a revenue deficiency on a variable cost basis of .24 cents. The total cost is 1 cent which makes for a total revenue deficiency on a total cost basis of .5 cents."

423. The witness went on to state that in his opinion a just and reasonable rate for the carriage of grain would be a rate that reflected its full cost. While the witness was willing to make a categorical statement as to the fairness of the rate proposed and the underlying principle, the Canadian Pacific Railway felt that Mr. Stenason was not in a position to speak with authority as a rate making expert.

Dr. Ford K. Edwards was therefore called to support the amazing proposition that grain should be affixed with a rate which returned not only variable cost, including such items as cost of money; not only variable cost plus a contribution towards overhead; but a rate returning fully distributed or total cost.

424. At page 2647, Volume 19, Dr. Edwards indicated how a fair proportion of contribution to overhead is determined:

" What constitutes a 'fair proportion' of the constant cost involves economic and traffic consideration. The basic consideration from an economic standpoint is that a large segment of traffic, such as Western grain moving to export positions, should not be a burden on other traffic. To avoid being a burden on other traffic or on the railways, the revenues received from this large segment of traffic cannot be appreciably lower than total cost."

425. At page 12585, Volume 71, Counsel for the Province of Manitoba referred to the above statment of Dr. Edwards and asked:

" Q. As a former director of the Department of Coal Economics of the National Coal Association, Mr. Edwards, could you tell us whether coal returns fully distributed costs in the United States?

A. Coal moves at something less than the so-called fully distributed ton and ton-mile apportionment. However, the issue is the same here, the rates should not be lower than what the traffic can properly bear, the value of the commodity, competitive considerations and the effect in particular of the rates upon the movement of the traffic. Those are all the economic and traffic considerations that are behind my statement here, and coal rates, I might say, the greatest dollar contribution to burden of all traffic in the United States.

Q. That is exactly the point I am going to come to, Mr. Edwards, and so that we bring the Commission along with that and other things, you said something less than fully distributed costs. I think that we should try and put on the record the exact contribution of coal revenue-wise and percentage-wise and I will now refer to the burden study, a document entitled "Distribution of Rail Revenue Contribution by Commodity Groups, 1957", and I am referring to page 38."

(These figures are set out in the document referred to as percentage of fully distributed costs, being 100%.)

426. At page 12587:

" Q. At page 38 of that Document, bituminous coal, U.S. to U.S., 79% ... official to official, 81%; south to south, 77%; west to west, 68%; official to south, 86%; south to official, 72%; official to west, 76%; south to west, 73%. So that while in none of the regions does coal return fully distributed costs, it is still the largest contributor to overhead in the United States.

A. Yes. That arises from lower than average contribution per unit of traffic handled, per revenue ton mile, let's say, multiplied by the volume of traffic attracted by that rate.

Q. Yes. So when you are discussing contribution to revenue on a volume traffic such as coal, fully distributed cost is completely mythical in trying to determine whether or not it will make a substantial contribution to revenue, because in the United States, while in no district does coal become fully distributed costs, yet in that same document which I referred you to, the front page of it, which is bituminous coal, it makes a contribution of \$200-odd million, making it the largest single contributor. That is correct, Mr. Edwards, isn't it; it is the largest contributor to burden in the United States?"

427. The witness made the fascinating observation that the movement of coal in the United States differs from the movement of export grain in Canada in that our grain is not subject to the same competitive conditions that coal must meet. Charity demands that we overlook this statement since Dr. Edwards is obviously not aware of the competitive conditions that Canadian export grain must meet in the markets of the world, including competition from subsidized grain from the United States.

428. We compared the empty return movement in the case of coal in the United States and export grain in Canada. The empty return movement as set out by Dr. Edwards at page 2659, Volume 19, was that the ratio empty to loaded car-miles for the study traffic was 57.3% for the Canadian National and 57.7% for the Canadian Pacific.

429. At page 12590:

" Mr. Mauro: Now, I wonder if you will agree, Dr. Edwards, that the movement of coal in the United States has a very large empty return movement?

A. It does."

430. At page 12591:

" Q. I refer ... to a document published by the Interstate Commerce Commission entitled ' Rail

Carload Cost Scales by Territories for the Year 1958', and at page 12 of that document under heading "Ratio of Loaded to Empty Car Miles by Type of Equipment, Year, 1958, Hopper Open to Pocahontas Region, 0.91." So that there is less than one loaded car mile for every empty car mile in the Pocahontas region. Would that reflect your experience?

A. That is right."

431. In other words, while coal in the U.S. has an empty car mile ratio of .91, grain in Canada has an empty car ratio of .57, indicating that the empty car ratio of coal in the United States is almost 60% higher than the empty car ratio of grain in Canada.

432. The witness in direct testimony, implied that the concept of fully distributed costs was the principle utilized by the Interstate Commerce Commission in the United States for rate making purposes.

The question was raised with him again under cross-examination and he replied at page 12594:

"A. Well, yes, in the long run they would, but this is a very fundamental and almost elementary statement of how you make rates, and I cannot conceive of any informed regulatory body long departing from the elements of rate-making that are set out here.

Mr. Mauro: Q. All right. As you told my learned friend at 2649, this is in effect synthesizes your position.

A. Yes, sir.

Q. Then I want to refer you to a document entitled "Explanation of Rail Cost Finding Procedures and Principles Relating to the Use of Costs" prepared by the Cost-Finding Section of the Interstate Commerce Commission --- and at page 21 of that document reference is made to the decision of the Supreme Court of the United States in Northern Pacific vs. North Dakota, the same case that you and I have been talking about?

A. Yes, sir.

Q. They (Cost Finding Section) are discussing disposition of constant costs and I shall read from page 19:

' Rule of Northern Pacific Railway Company vs. North Dakota:

As the disposition of the constant expenses in a cost study must give consideration to the pronouncements of the Courts, reference is made to the decision of the Supreme Court in Northern Pacific Railway Company vs. North Dakota. The Court found that rates fixed by the State of North Dakota on lignite coal were confiscatory in that they did not cover the full cost of the service, including an apportionment of the non-variable expenses.... While this statement indicates that all costs must be taken into consideration in fixing rates, the Court, nevertheless, appreciated the problem of dealing with the constant expenses when it laid down the following rule:

' The outlays that exclusively pertain to a given class of traffic must be assigned to that class, and the other expenses must be fairly apportioned. It may be difficult to make such an apportionment, but when conclusions are based on cost the entire cost must be taken into account.' "

433. The I.C.C. continues:

" ' The view has sometimes been expressed that under this rule a rate, to be above a confiscatory level, must cover the assignable (out-of-pocket) costs plus some arbitrary apportionment of the constant costs. But, as economists have hastened to point out, the effect would be to give to the treatment of the constant costs a rigidity in law which they do not have in economics and cannot have in the practical aspects of rate making. The value-of-the-service (demand) factor is not identical for all freight or all markets. Prices are never based on an arbitrary apportionment of the constant or fixed expenses. Indirect expenses never burden all traffic proportionately, ton for ton, irrespective of the ability of the traffic to pay. Such an approach, indeed, would be contrary to the principle that low unit contributions to the constant costs may yield increased aggregate contributions as a result of added volume.' "

434. At page 21:

" ' It appears from the preceding citation that the Court in using the term 'fairly apportioned' did not mean that the rates should be constructed by taking the out-of-pocket costs and adding thereto some amount which is based on a statistical apportionment of the constant or fixed costs. The Court specifically stated that the value of service (i. e. demand) should be considered. As pointed out earlier in this chapter, value of service (demand) is, indeed, the key to a 'fair apportionment' of the constant costs.

In the first citation given above the Court stated that when conclusions are based on cost the entire cost must be taken into account. This is interpreted as meaning that the

ratemaker can ignore neither the existence of the constant costs (or burden) nor the necessity of the traffic in question making a proper contribution to such costs. However, the measure of such contribution rests on value-of-service considerations and not on cost considerations. Any other concept could not be reconciled with the fundamental nature of transportation costs.¹

I would presume, Dr. Edwards, that what I have read to you is also in fact your position on the interpretation for rate making purposes of the Supreme Court Decision in North Dakota?

A. Yes, sir, I wrote this and I certainly subscribe to it as well today as I did when I wrote it."

435. At page 12601, the following appears:

" Q. I thought we might just put on the record again the statement of the Interstate Commerce Commission on this point, which, I think, might be helpful. It is at page 3 of(their Document) 4-54:

¹ Constant costs represent the difference between the out-of-pocket, or variable costs, and the total costs. They consist of those costs which, within the limits of the range of output under study, are unaffected by increases or decreases in production. ... The constant costs are, in effect, expenses which are incurred on behalf of the operation as a whole, and inasmuch as they can be avoided only by abandoning the entire operation, or, at least, very substantial portions of it. They cannot be traced to particular units of output or classes of customers. They continue to exist irrespective of whether or not any given unit is produced.¹

So that, again, the important determination, in the first instance, in costing is the determination of the out-of-pocket expenses and then to what extent of the fully distributed cost you apportion this constant factor; and that can be apportioned in a number of ways. You have mentioned two -- either on a percentage basis or on a ton-and-ton- mile basis?

A. Yes.

Q. And this is a matter for the rate maker, in fact?

A. Yes; it must be ever kept in mind the amount of it and how you are going to recover it.

Q. Now, Dr. Edwards, you have mentioned just a few minutes ago

that you have discussed this matter in a number of cases and in a number of documents, and I thought it would be helpful if we could refer to some of the statements and you might simply comment as to whether or not your position on the subject remains the same as previously stated?

The first document that I will refer to is ICC docket 28300, Class Rate Investigation, 1939, and it is a statement of Ford K. Edwards in reply to the criticisms of exhibits introduced by him. This statement is dated February, 1943. At page 12 of the statement, in your rebuttal section 8, you are referring to statements made by Mr. Kerr:

Mr. Kerr states that assuming that the average unit of cost ton-mile is less than or at least not higher than in the Eastern District, such unit cost could not safely be used in measuring the reasonableness of rates in one section versus another for the reason that compositions of traffic from which the aggregate revenues are produced are fully different ... ? ' 1

Your answer was:

' The cost study serves to evaluate in cents per 100 pounds such differences in transportation conditions as weight of load, tare weight of car, per cent of empty return, length of haul and whether carload or less than carload to the degree that these affect costs. As to the transportation burden, which I interpret as meaning the constant or indirect expense, it provides no guide as to its distribution over commodities of different ability to pay. The cost study, in my opinion, can only indicate the amount of such burden as stated in the aggregate and as produced prorata to an amount per revenue unit of traffic handled.' 1

Q. You have no reason to change your opinion which you gave in 1943?

A. No; except that I would state this, that a number of studies of burden contribution were made by the Commission, and there naturally evolved a certain pattern of reference. That does not mean that any percentage distribution or future distribution of constant costs created that margin of the relationship to fully distributed, but it gave a basis of showing the relative contribution which experience had shown various kinds of traffic could produce.

That doesn't change the principles I am talking about. That was the result of those principles."

436. We then asked the witness whether he had any reason for changing in 1960 the very important principle that he had established in 1943 and at page 12605 he replied:

" Having arrived at those statistics it provides a guide as

to what the classes of traffic have been doing under the experience of rate making that was going on in that period up to that time."

437. At page 12605 we referred to Exhibit 19 submitted by Dr. Edwards in the I.C.C. docket 28300 and pointed out that in the Exhibit he stated that the constant expenses which are common to both freight and passenger traffic are in effect re-grouped into a lump sum and treated as a burden which must be distributed on the basis of ability to pay. We asked whether or not that was his position on the matter of fully distributed costs.

" A. That was my position in dealing with the American railroads. It is not the position of these roads here. "

438. He went on to explain that the Canadian railways had decided arbitrarily to treat passenger services as incremental services. He had decided in 1943 to deal with fully distributed costs and the constant apportionment of those costs in the manner as stated above, but since that time; "there has been this evolution in this matter." This apparent inconsistency between Dr. Edwards' position in 1943 and his position in 1960 was referred to at page 12612:

"Q. ...I will try to make it as concise as possible -- whether, on May 30, 1960, Dr. Ford K. Edwards still believes that constant costs of freight and passenger services should be grouped together and distributed on the basis of ability to pay? Is that the opinion of yourself on May 30, 1960? It was your opinion in February 1943, and I am just wondering whether it is still your opinion?

A. Well, I cannot make an answer yes or no to that, because I have introduced studies where the parties -- all they were interested in was a showing of the freight service costs."

439. At page 12613, Volume 71:

"Q. 'The long-run rail freight out-of-pocket costs in the aggregate, as computed by the Cost Section, run to some two-thirds of the rail carriers' total revenue requirements, including the going rate of return and the passenger and LCL deficits when they occur. This leaves about one-third

of the aggregate revenue requirements from freight to be apportioned as 'burden' on a value-of-service basis.

The term 'fully distributed cost' signifies that the constant or overhead costs of the carriers, including the passenger and LCL deficits when they occur, have been prorated equally among all tons and ton-miles of carload traffic without regard to value-of-service elements, and added to the out-of-pocket costs of transporting the traffic. The fully distributed cost, as the term is here applied to the freight service, represents, in effect, a rate-making 'dead center' in that it assumes that each shipment makes the statistical average ton and ton-mile contribution to burden realized from all carload freight traffic in the period studies. As will be later demonstrated, nothing moves at fully distributed costs.

Full cost figures vary, of course, depending on how they are constructed. If applied as a percentage of the direct costs, a common procedure in general cost work, the results will differ widely from those based on the net ton and ton-mile apportionments.

Using the fully distributed costs as a yardstick, it is found that low-grade, volume-moving traffic with a relatively elastic demand customarily moves at rates less than fully distributed costs, whereas the higher-valued traffic with a relatively inelastic demand moves at rates above this level. The percentage range in the level of rates by commodity classes generally ranged from the low fifties up to 200 per cent or over of the fully distributed costs.

What purpose does fully distributed cost serve? This question merits serious consideration as these costs are sometimes referred to by parties in speeches, testimony or briefs without adequate explanation or qualification; sometimes the impression is left that this level of cost is itself a final measure of what a rate or price ought to be. This, of course, is misleading.

Any reference to fully distributed cost ... lies in those types of proceedings where comparative total railroad costs are desired by regions or territories. The Class Rate Investigation (Docket 28300) was one illustration. Division cases constitute another use.'

Q. (Dr. Edwards) those were your opinions on January 27, 1954, and I assume you have no reason to change your opinions today on the real use of fully distributed cost and the utilization of it for rate-making purposes?

A. No sir, except the last sentence: "Division cases constitute another use."

440. At page 12618 we discussed with the witness an exhibit filed by him in I.C.C. Docket 31711. At page 12619:

" Q. ' The first component of the rail expenses as defined above, reflects cost in the narrower sense. As the Commission indicates, this is as far as cost finding as such can go.' I wondered whether it remains your opinion today?

A. Yes, as far as it can go in the narrower sense as I have defined it.

Q. And in the fresh vegetables case you quoted, with approval, the ICC document 28300 to the effect:

' ... those expenses of a constant or fixed character, which are not capable of assignment to particular kinds of traffic and which must be borne by the various kinds of traffic in proportion to the ability of each to pay.'... This as of 1960 remains your opinion?

A. Yes; but I don't want to be misinterpreted, ... the total cost must be kept in mind, so you cannot be unaware of revenue needs when you make a cost study. So you have to evaluate that statement in the light of those definitions of terms.

Q. But you haven't changed your mind one bit, Dr. Edwards, to the effect that avoidable costs, variable costs, out-of-pocket costs, whatever term you want to apply to them, is as far as cost finding can go, and that constant and fixed costs must be distributed in proportion to the ability of the traffic to bear?

A. Yes. It actually involves economic and traffic considerations.

441. We went on to discuss with the witness his evidence in the Southern Governor's case in 1958. The evidence in that hearing appears at page 12620:

" Mr. Alderage:

' Q. Would you in the light of your experience in transportation, Dr. Edwards, expect all commodities or all groups of traffic to produce their fully distributed costs?

A. I would expect them all to produce in proportion to their ability to pay, or stated another way, giving weight to

to the effect of the rates on the movement of the traffic, which goes back, I think to Section 15 (a)."

442. We referred again to the document of January 27, 1954 and at page 12621, Volume 71, the following appears:

" ' From time to time over the past several years suggestions have been made that individual rates and rate structures be brought much more into line with some full average cost figure; or, indeed, based on full costs. Taken at extreme, the apparent implication here is that the value of the service be given much less attention, or even ignored. This would move the pricing of services produced under conditions of constant costs from any market reality substitutes arbitrary apportionments irrespective of their effect on the traffic flow or on the carriers net revenues.

Parties advancing these suggestions may have been concerned with what seemed to be unduly wide departures from cost standards or from value-of-service criteria. To illustrate, a situation may arise where one agency of transportation has cut its rates severely to prevent further diversion of traffic to another agency or to recover traffic already lost.

Whatever the reason, however, fully average costs are believed to offer but very precarious support for the determination of rates. As a matter of relationship it is true that one expects to find volume-moving traffic with an elastic demand moving at rates below 'fully distributed costs', and traffic with a relatively inelastic demand bearing rates above this 'dead-center' point. But even here the very rise of substantial interagency competition may promptly change a comparatively inelastic demand for a given carrier's services into one which now becomes highly elastic.

The gist of the foregoing is that the fully distributed costs are no substitute for a vigorous appraisal of the effect of the rates on the movement of the traffic. ' ...

Q. You would today advance that same statement, Dr. Edwards, as your position in regard to the use or utility of fully distributed costs for rate-making?

A. Yes, sir."

443. In an attempt to determine the upper limit which, in the opinion of Dr. Edwards, would be a just and reasonable rate or the point beyond which a rate becomes unjust or unreasonable, we asked at page 13084, Volume 74:

" Q. Would you feel that a rate 33 per cent above fully distributed costs would be just and reasonable for moving

grain in Canada?

A. I would feel that a rate 33 per cent above the rate proposed would not be a just and reasonable rate, based on the traffic and rate - making considerations as set forth by Mr. Roberts and Mr. Crump."

444. This statement and its implications will be discussed later with reference to the proposed rate that Manitoba shippers are being asked to pay.

Proportional Rates

445. A proportional rate is a rate applying as a proportion on a part of the through rate on a shipment between one station and another .. but moving between the two stations, either originating beyond the first, or destined beyond the second. That is, the proportional rate is dependent for application upon (a) a previous transportation to the station from which the proportional rate applies; (b) a subsequent transportation from the station to which the proportional rate applies; (c) or both. For example, the rail rate on iron and steel articles from Sault Ste. Marie to Fort William is 84 3/4¢ per 100 lbs. if for local delivery, or 66¢ per 100 lbs. when subsequent transportation is required to final destination. Similarly Canada Steamship Lines publishes a reduced rate of 83¢ per 100 lbs. on honey from Fort William to Montreal for export but applicable only on traffic shipped by rail from Winnipeg to Fort William (Item 1785, CSL 100-P).
446. At page 13085, Volume 72, Dr. Edwards agreed with our definition of a proportional rate and further agreed that such a rate is lower than the combination of local rates.
447. At page 13087, export rates were defined as
- "..rates or charges on shipments of traffic destined to a foreign country; in case of steam vessels, the rate from originating

points in Canada to the port of exit'. "

448. Counsel for Manitoba then asked the witness:

" Q. And I am correct in stating that proportional rates and export rates are invariably lower than rates for local delivery? In other words, the rate from Winnipeg to Halifax for export is lower than for delivery in Halifax.

A. That is only true of the export rates, but proportional rates referring to through -- I am thinking mostly of my grain experience -- the through rates of Minneapolis to Jacksonville, Florida, with a right of milling transit at one or more intermediate points - the proportional rates are the division of the through grain rates into proportions to the outbound transit conditions. You see, you have got the higher cost and lighter load bearing on what the rate would be on the through movement.

Q. There is no question the proportional rate is always lower than a combination of the locals.

A. The proportional rate is a factor in the through rate available.

Q. That is the whole purpose of it, isn't it, that on the through rate they only pay a proportion.

A. Yes.

Q. But my point is -- forgetting about the transit privileges -- that a rate based on a proportion of one of the local rates invariably is lower than the combination of the locals.

A. Yes, you are right. "

449. We then referred Dr. Edwards to page 12804, Volume 72, where he was discussing normal rate making in relation to the rate on carriage of export grain. He had stated that the out-of-pocket costs of this traffic are approximately 7½ mills a ton-mile and that if he were required to set a proper rate on this traffic, he would contemplate a rate somewhere in the neighborhood of 1¢ per ton-mile, as suggested by the Canadian Pacific Railway.

450. We pointed out to the witness that the export rate from Fort William to

Montreal is 55 cents per 100 lbs. for 990 miles or a return of 1.06 cents per ton-mile. Since this rate has been voluntarily maintained by the railways and since it is above the 1¢ per ton-mile figure, we suggested to the witness that this would come up to the standards which Dr. Edwards had set for a proper rate.

451. At page 1309C, Volume 74:

" Q. And you have studied the grain problem in Canada. You know the statutory rates only go to Fort William and Vancouver.

A. Yes.

Q. And that east of Fort William this is a rate established by the railway and it returns 1.06 cents per mile which comes up to your general standards that you have established, being a just and reasonable level of rate for the movement of grain.

A. The fact that it is on the books, I suppose, speaks for itself. That is what you are saying."

452. We then pointed out that the rate from Fort William to Halifax is determined by adding 1 cent to the Montreal rate, or a through rate of $53\frac{1}{2}$ cents per 100 lbs. for 1,710 miles, or .62 cents per ton-mile. The witness was asked whether he agreed that this rate is also a reasonable rate since it is on the books and the railways, if they wished, could raise the rate. He replied that he was unable to answer the question.

453. Counsel then suggested that the foregoing were an accurate example of normal rate making in the field of export or proportional rates.

" Q. The 1 cent rate for the additional 729 miles is a rate arbitrary or proportional rate and produces .027 cents per ton-mile, or three-quarters of a mill per ton-mile; (as compared with the alleged out-of-pocket cost of $7\frac{1}{2}$ mills per ton-mile on statutory grain rates.)

A. Well, I presume that that incremental movement beyond Montreal is through train movement -- trunk line movement -- without gathering service obligations.

Q. You and I know it is very valid rate-making to set an arbitrary on a movement which contemplates furtherance. The 1 cent arbitrary over the Montreal is a valid rate-making principle, because one of the principles of rate-making on these proportional rates is that the proportional rate contemplates further transportation; it is not a final or total cost; and this rate arbitrary over Montreal to Halifax is a just and reasonable rate put into effect by the railways without any statutory obligation. "

454. The witness, Edwards, was on very difficult ground because he had personal knowledge of the practice and principles applied by the Interstate Commerce Commission in the determination of reasonableness of rates. The I. C. C. has consistently held that proportional rates are part of through rates and as such differ from local rates. Before a proportional rate may be attacked there must be an allegation that the through rate is unreasonable, whereas local rates as such may be attacked separately when used separately. (See 28 I. C. C. 64, Stephen's Grocery Vs. St. Louis I&M&S Railway 42 I. C. C. 396 and 398.)
455. At page 13093 we referred to the movement of anthracite coal to "washers" in the U.S. and pointed out that this particular proportion of the through rate returned 32% of out-of-pocket cost and 18% of fully distributed cost.
- The witness answered:
- " This movement of anthracite to "washers" is all contemplated in the total rate of anthracite. It is a short-haul move from the mine to the washery to lift out the rock and the unclean elements in it so that they won't be hauled through to destination; and that rate was made as a nominal charge; and in any consideration of the total rate on anthracite, it isn't too far below fully distributed."
456. This is exactly the point that the Province of Manitoba is placing before this Commission. The rate established for the movement of grain contemplates further transportation charges on it.
457. The rate on any one portion of the through movement is meaningless when looked at by itself. An analysis of the various portions of the through all-rate on grain from Winnipeg to Halifax produces varying results depending on which portions are considered. This can be illustrated as follows:

| | <u>Miles</u> | <u>Rate</u> | <u>Revenue per</u> <u>Ton-Mile</u> |
|--------------------------|--------------|-------------|---------------------------------------|
| | | <u>¢</u> | <u>¢</u> |
| Winnipeg to Fort William | 420 | 14 | .67 |
| Fort William to Montreal | 990 | 52 1/2 | 1.06 |
| Montreal to Halifax | 730 | 1 | .027 |
| Winnipeg to Montreal | 1,410 | 66 1/2 | .94 |
| (direct mileage) | 1,350 | 66 1/2 | .98 |
| Fort William to Halifax | 1,720 | 53 1/2 | .62 |
| Winnipeg to Halifax | 2,140 | 67 1/2 | .63 |

458. Each of the proportions of the through rate contemplates further transportation charges. The Winnipeg to Fort William portion is based on a further movement beyond Fort William and would be unreasonable compared to the domestic rates. The Fort William to Montreal portion is based on the fact that freight has been paid on the grain to Fort William since no grain originates at Fort William. The Montreal to Halifax portion is so nominal that no-one has dared to suggest that it should be looked at as a separate rate.
459. The Winnipeg to Montreal portion is the basic portion of the movement by rail. It will be noted that the revenue per ton-mile is in excess of what the railways allege are their out-of-pocket costs and very close to their estimate of fully distributed or total costs. The revenue varies from .94¢ if the movement is to Fort William and then to Montreal, to .98¢ if the traffic moves directly to Montreal over the lines of the Canadian National Railways. The portion from Fort William to Halifax produces a revenue per ton-mile of .62¢ which is lower than that from Winnipeg to Fort William.
460. The total rate from Winnipeg to Halifax also contemplates further movement by water and should be evaluated in that light.
461. When the Winnipeg to Halifax rate is analysed by dividing the portions

at Fort William, it is significant that the railways are proposing to double the rates only on that portion of the total rate which is already higher (.67¢ per ton-mile Winnipeg to Fort William v.s. .62¢ per ton-mile Fort William to Halifax).

462. This was further demonstrated with reference to the evidence of Harry Arkle, Freight Traffic Manager, Western Lines, Canadian Pacific Railway. This evidence is at page 13094, Volume 74 where we refer Dr. Edwards to Mr. Arkle's evidence taken at Ottawa on May 25, 1953 in a hearing regarding the removal of a hold-down on Crow's Nest rates on grain and grain products between Prairie points and Fort William. Mr. Arkle was being questioned by Counsel for the C.P.R., Mr. I.D. Sinclair.

" Q. Would you tell the Board, Mr. Arkle, whether traffic conditions are similar in the movement of grain for local consumption, grain products for local consumption within Western Canada and grain and grain products moved to Fort William.

A. There are substantial differences in how grain is carried if it is destined locally within Western Canada and if it is destined to Fort William.

Q. Can you give us an example?

A. There are differences between local grain and Fort William grain in the volume transported, that is one.

Q. Yes.

A. And the contract of carriage is two.

Q. And the minimum weight governing grain products, and the further transportation charges that are contemplated when the traffic moves.

.....

Q. I think you said there was a difference in that respect?

A. Well, the movement to Fort William

contemplates the assessment of additional transportation charges on grain or its products beyond that point either (a) to all rail, lake and rail or all water. On the local grain and grain products between western points, that is points east of the lakehead, no additional charges are contemplated.' "

463. At page 13100 Counsel for the Province of Manitoba:

" Q. I simply read you that, Dr. Edwards, to tell you that in the movement of grain in Canada these statutory rates, Crow's Nest rates, are in fact proportional rates or export rates. They contemplate burdens, and I wondered whether you have this in mind when you decided that the one cent per ton was a just and reasonable rate for the carriage of grain under statutory provisions? Did you know about that?

A. The determination of whether the one cent was a just and reasonable rate was based on the factors enumerated by Mr. Roberts as a traffic man's analysis and judgment, and Mr. Crump's analysis.

Q. Did Mr. Roberts or Mr. Crump tell you these rates were proportional and they contemplated further transportation costs?

A. I had no discussions with them on the subject."

464. There is no doubt in the minds of the traffic officers of the Canadian Pacific Railway, both past and present, that the rate on the study traffic is an export rate, contemplating further transportation charges. The matter was also discussed with Mr. J. Roberts, present General Traffic Manager, at page 3512, Volume 24:

" Q. On export and import rates, ... you say: ' In establishing these rates which are sometimes lower than the level governing local movements to or from the ports, cognizance must be taken of the fact that the rail rate constitutes only a portion of the total transportation charge and must be considered in relationship to the overall picture if traffic is to move freely.'

I am sure you will agree that this same principle should apply to grain moving to export positions?

A. Well, yes. "

465. The Board of Transport Commissioners had held that the statutory rates on export grain are in fact proportional rates (see Kerr vs. Canadian Pacific Railway Company, 9C.R.C., 207). The complaint in that case was that the rate on grain, grain products and vegetables for local consumption from Franklin to Winnipeg was unjustly discriminatory as compared with the rate from the same point to Fort William, a much further distance on the same goods for Eastern markets. At page 208, the learned Commissioner states:

" It cannot be urged that this constitutes a discrimination against the applicant. The rate to Fort William is a division of a through rate concerned with a through shipment to an eastern market. Where grain and grain products move to Fort William for local consumption they move on the company's special mileage tariff and take a rate of 29¢. The through rate of which the 13¢ form a part is affected not only by the competition of other grain-growing territories; it was also reduced by the provisions of the Crow's Nest Agreement. The conditions affecting the through shipments handled on this through rate are such that a division of such a through rate cannot be taken as the measure of the reasonableness of a local rate from Franklin to Winnipeg. The complaint should therefore be dismissed. "

466. Also see In Re Domestic Grain Rates Within Western Canada 74 C.R.C.

113. At page 127 the learned Chief Commissioner quotes from the judgment In " Re General Rates Investigation" 33 C.R.C. 127 at page 163:

" Application was made on behalf of British Columbia that the domestic grain rate to Vancouver be lowered to an export basis. (this is, 1925) This was urged partly on the ground that it costs no more to move the one class of grain than the other, and an improper discrimination is set up by reason of such difference and by a comparison of grain rates elsewhere.

The first contention altogether disregards the reasons lying at the basis of export rates, and ignores also the primary test of domestic rates; which is whether the rate be reasonable and fair It is not intended to repeat any more fully the arguments justifying an export basis lower than that accorded to domestic traffic further than to say that the former is simply a part of a through rate, and it is thoroughly justifiable from that standpoint.

467. At page 144, the Learned Chief Commissioner refers to the decision of the Board in Fraser Valley-Surrey Farmers Association Co-operative 43 C.R.C. 97 at page 122 where this matter of the difference between export-import and domestic rates was set out:

"...In many decisions of the Board, the carriers have been required to establish import and export rates lower than governing when the same traffic is moving locally between the same points in Canada, and the Board has stated, in many decisions, that an import rate is no sense a necessary measure of the reasonableness of the domestic rate, or proving that unjust discrimination exists. Such rates are but proportions of through tolls governing on the traffic from point of origin to final destination. Further, import, as well as export, traffic is subject to port competition. "

468. It is completely meaningless, therefore, for the Canadian Pacific Railway to take the movement of grain to export from, for example, Winnipeg to Fort William and cost this portion of the through movement as the cost to the railway in arriving at a just and reasonable rate.

469. The Canadian Pacific Railway after expending 250,000 man hours in the preparation of this study, after lengthy and costly hearings by this Commission, have provided at the best the cost of a proportion of the through movement on export grain and not the cost of the movement of grain from origin to destination. In other words, the Canadian Pacific cost study has failed to take into consideration the additional transportation charges and resulting revenues contemplated on the movement of the study traffic. To this extent, the study of the Canadian Pacific Railway is interesting but valueless.

Precision of Canadian Pacific Cost Study

470. In addition to the experts retained by the railways and the Provinces of Alberta and Manitoba, the Commission has itself retained experts to evaluate the technical data placed in evidence and to advise the Commission in accordance with their findings. We feel that it would be superfluous to restate the technical data submitted by the cost

experts and we will therefore confine ourselves to a discussion of the pertinent factors relative to the credibility and acceptability of the Canadian Pacific's evidence.

471. In December, the Canadian railways submitted evidence as to the cost of movement of the study traffic. Their precis totaled in excess of 200 pages of detailed statistical data. They stated that the studies had consumed a period of approximately one year. Such a study, one could properly assume, would be precise to the ultimate degree, and in fact in December, 1959, there was no doubt in the mind of the Canadian Pacific Railway witness, Stenason, as to the precision and accuracy of the material he submitted at that time.

472. At page 2442, Volume 17, Mr. Stenason was asked by Counsel for the Canadian Pacific Railway:

"Q. Mr. Stenason, as to these exhibits which have just been filed with the permission of the Commission, being Exhibits 58 to 70, were these exhibits prepared by you or under your direction?

A. Yes.

Q. And are they correct to the best of your knowledge and belief?

A. Yes. "

473. At page 2452:

"Q. What is the result of the field work in its impact on the study?

A. It made for a far more precise analysis than would have been possible otherwise. "

474. In fact, one of the witnesses called by the Canadian Pacific Railway in support of the cost study in reply to the question as to whether or not the cost study submitted was "a cost of handling grain", replied that the study submitted was in fact "the cost of handling grain".

475. This certitude as to the precision of the findings lasted approximately

five months to May, 1960. At that time when Mr. Stenason was presented for cross-examination, to the consternation of both the Commission and Counsel for the other parties, Exhibit 132 was filed, comprising 20 pages of additional data which changed each and every exhibit filed by the Canadian Pacific Railway in December, 1959. The precise analysis of December, 1959 required by May, 1960 a complete revision of most of the figures and all of the factors included in the calculations. The Commission will recall the discussion that ensued at the time that Exhibit 132 was placed in evidence.

476. At page 11885, Volume 67, the Chairman discussed the changes with Mr. Stenason and requests information as to when the changes were made. At page 11886:

"Q. Chairman: Mr. Stenason, are we to understand that Exhibit 132 includes changes that were made from time to time as you discovered them?

A. Mr. Stenason: Yes.

Q. Chairman: And some of them will go back to last January?

A. Mr. Stenason: Yes; as a matter of fact, the most significant change of the variable cost was in freight car repairs and this really arose from tests which resulted from a meeting we had in Montreal in November, and there was a very large scale sample involved. "

477. In other words while in December, 1959, this document of ultimate precision had been presented to the Commission, "the most significant change" was made the very next month. At the time that they were presenting their evidence in December, the Canadian Pacific Railway was in the process of revising this item of freight car repairs, because as Mr. Stenason states they had determined in November to revise this figure. There was no suggestion in December, 1959, that these figures might be revised, or that they might be corrected or that they were imprecise in any degree. Yet one month later the Canadian Pacific Railway

was certain that there was an error in the study presented, and that the figures should be changed. The Commission and Counsel, however, were not advised of this imprecision until the cross-examination of Mr. Stenason on May 11, 1960. The extensive changes and revisions resulting from Exhibit 132 were discussed by Counsel for the Province of Manitoba at page 11893:

" Mr. Chairman, I point this out simply to show the nature of the changes that have been brought about by Exhibit 132, and I would recommend, to save the time of the Commission, that the Canadian Pacific Railway be now asked to file new exhibits for 63, 64, 65, 66, 67, 68, 69, and 70; and also the summary appearing at page 30 of the precis at page 2816 of the transcript. "

478. Counsel for the Canadian Pacific Railway stated that he was surprised at such a request since "all this intensive work has done is to make relatively minor changes in the situation overall" (page 11894). He failed to note what the Commission clearly observed that these so-called minor changes in fact resulted in a complete revision of all of the basic data that had been presented in the precise study of 1959. As a result of the above motion, the C.P.R. filed completely new Exhibits replacing those submitted in December, 1959. The cost study of December, 1959 was replaced by the cost study of May, 1960. The Canadian Pacific was dissatisfied with the precision of the December, 1959 study. The Provinces of Alberta and Manitoba have proven that the May, 1960 study is similarly suspect.

479. It is interesting to note that while in December, 1959, the witness, Stenason, constantly repeated that the Canadian Pacific Railway was being conservative in their determination of costs attributable to the study traffic, in Exhibit 132 an additional \$2,250,000 of constant cost was added to the study traffic. One can only conclude that the conservatism and generosity which governed the study of December, 1959 had

ceased to exist by May, 1960 and grain was therefore required to assume this additional \$2,250,000 of expense.

480. We now deal with six specific items which will illustrate the arbitrary and questionable nature of the Canadian Pacific study.

These are:

- The basic units of transportation
- Switching
- Traffic and general expenses
- Allocation of car days
- Cost of money
- Constant costs

Basic Units of Transportation

481. This is the very core of the Canadian Pacific Railway costing method since they started by working out the total number of traffic units handled namely, cars and tons, and then translated these factors in to train loads. They then allocated train expenses such as fuel expenses, crew wages and various other cost items to arrive at their final figure.

482. At page 11691, Volume 66:

"Q. Mr. Stenason, in order to accurately determine the cost associated with the study traffic you had to first determine the number of cars handled?

A. Yes, that is correct.

Q. And, as I understand your testimony, the number of cars handled was determined by calculating the number of loaded cars passing through each terminal on the prairie and Pacific region, and from this you arrived at the number of cars handled at each terminal?

A. This is basic to the switching studies. The number of cars loaded were determined from special studies of station records which showed the revenues, cars and tons of statutory and related grain originated at each station. "

483. The witness was referred to his statement at page 2471 where he stated that the number of carloads of study traffic was determined from the way bills. The number of loaded cars passing through each terminal on the Prairie and Pacific region was developed from the routing of the traffic and this gave the loaded car handlings at each terminal. Counsel referred to the situation of a car of grain originating in Winnipeg destined to Fort William and the fact that it would pass through terminals at Winnipeg, Kenora, Ignace and Fort William.

484. At page 11692:

" Q. So that your figure of car handlings was the sum of the cars passing through the terminals mentioned -- Winnipeg, Kenora, Ignace and Fort William?

A. That is correct; wherever classification work was done to a through loaded car of grain. "

485. At page 11693:

" Q. I say to you that, as you have previously admitted, in utilizing this factor of cars handled for switching purposes you took the sum of the cars moving through the points from Winnipeg to Fort William, namely, Winnipeg, Kenora, Ignace and Fort William, and used that as a sum total?

A. That is our estimate of the number of car handlings which were required.

Q. And I say further that any trains of grain leaving Winnipeg bound for Fort William, that they would pass through Kenora, Ignace and to Fort William without being rehandled in any way at intermediate points?

A. That is not correct. That is simply not the way the traffic is handled. "

486. It is important to re-emphasize the essential nature of this fact in the

resultant cost studies. The Canadian Pacific based their findings as to units of traffic by constructing the number of cars handled through the various terminals for classification and determining from these the various other units of cost as previously set out. Any over-estimation of this basic unit (cars handled) will be reflected throughout all the other cost items based on this calculation. The witness, Stenason was insistent in his contention that trains of grain leaving Winnipeg do not leave in solid train-loads. Counsel referred to the evidence of Mr. H. Arkle quoted herein (page 211).

487. At page 11695 the following excerpt was read to the witness:

" ' Mr. Sinclair: It might be wise, Mr. Arkle, and it would be of some assistance to the Board, if you would explain a little more and tell the Board the differences, for instance, on each of these categories that you speak of. Take the volume first. Why do you say that the volume to Fort William is a significant difference compared to the volume of local mileage grain and products?

A. The movement to Fort William is virtually in solid trains handling maximum tonnage with minimum of switching of terminal work both in transit and at Fort William.

....

Q. Now does all grain moving to Fort William channel in at a single point on the Canadian Pacific, for instance?

A. Yes, it comes into Winnipeg and then is made up in solid trains, they are terminalled there and moved to Fort William in solid train loads."

488. The witness was asked whether he agreed with the above statement.

His answer was a clear and definite, "no, sir". The Commission has on the one hand, the statement of Mr. Arkle who had 40 years experience in the movement of grain and grain products in Western Canada and on the other hand, the statement of Mr. Stenason, who is 29 years of age, who

completed his formal education in 1956 and who has therefore approximately 2 years of actual experience in the traffic movement of grain and grain products in Western Canada. The choice is obvious. We submit that the testimony of Mr. Arkle should be accepted. The statement of Mr. Arkle is corroborated by the evidence of Mr. Bandeen on behalf of the Canadian National Railways.

489. At page 13203, Volume 75:

" Q. Now, I asked this question of Mr. Stenason and also Dr. Edwards, this matter of grain moving in train loads. You recall the quotation I read in from the evidence of Mr. Arkle that grain moving from Winnipeg to Fort William moves virtually -- not completely in solid train loads but virtually in solid train loads. I wonder if you could tell us the experience of the Canadian National Railway.

A. I think we would be in full agreement with that statement. As I mentioned already this morning, we have a different set-up than Canadian Pacific, and the Canadian Pacific main line is going east through the Lakehead, ours is not. Movements from Winnipeg going east go along the north line and take the cut-off at Nakina. So the movement to the Lakehead is traffic that is largely terminated at the Lakehead, and I understand 80 per cent of the grain is -- this doesn't mean that they are all grain, there could be a carload of something else there, but 80 per cent of it is grain, and to a large extent some of our manifest trains -- one of them is largely grain. But if you take 80 per cent of the grain moving in solid trains, you would be fairly close. This is from Winnipeg to the Lakehead?

Q. Yes, So that Mr. Stenason disagrees with the statement of Mr. Arkle, but you would tend to corroborate that in the Canadian National Railway they are virtually in solid train loads.

A. Yes. Ours is not the main line going east. "

490. We refer to the evidence submitted on behalf of the Provinces of Alberta and Manitoba by Mr. R. L. Banks, touching upon this matter of basic units of traffic and the allocation of line haul common costs. At page 19225, Volume 116.

"The method by which the Canadian Pacific Railway has attributed to grain its share of line-haul common cost is succinctly described at page 2480, Volume 18, of the transcript. The key to this method is: (quoting Mr. Stenason) Constructive train miles used to handle the study traffic were developed, based on the average weight of trains, on which the study traffic moved weighted by the proportion of the study traffic to total traffic on each train-run. "

491. Mr. Banks poses the question whether or not it is reasonable to use average weight trains for costing purposes when large segments of the grain movement are deliberately run as drag trains for time freights, and also points out, that part of the grain movement is actually handled in solid grain trains. Therefore for the computation of costs for the movement of grain, solid train loads represent a more reasonable point of departure than a cost computation based on average weight trains. The use of average weight trains as utilized by the Canadian Pacific Railway reflect a tonnage reduction for manifest freights in order to achieve schedules and speeds required to service other traffic but not required for the movement of grain or grain products which can as well be serviced by so-called drag or full-tonnage freight trains. The influence of such manifest freight tonnage reductions upon a composite train weight figure leads to higher unit cost. Mr. Banks states:

"...Consequently, if line-haul common costs are computed on the basis of average weight trains, the resultant higher unit costs impute expense to the grain movement which actually arises from the service requirement of other enterprises of freight traffic. "

492. At page 19226:

" To determine that portion of line haul common cost which is an inherent cost of the grain movement, Manitoba/Alberta have computed constructive train-miles on the assumption that grain is handled in solid trains, as its volume generally justifies, over the 11 main line sub-divisions, Alyth to Vancouver and Moose Jaw to Fort William. "

493. In approaching this phase of the Canadian Pacific Railway's cost study we suggest that the test introduced by Counsel for the Canadian Pacific Railway referred to as the "K" Test should be applied; namely, that knowledge and common sense be the deciding factor. We submit that the knowledge of men such as Mr. Arkle and the common sense and experience of the Canadian National Railway should be applied and the findings of Messrs. Banks and Borts be accepted.

Trains and Train Miles

494. At page 11737, Volume 66, Counsel for the Province of Manitoba dealt with the method utilized by the Canadian Pacific Railway in constructing trains and train miles apportioned to the study traffic.

- " Q. The point I am particularly interested in is the fuel and crew wages where you say they are directly traceable to the derived trains.
- A. That is right.
- Q. And if your method of establishing the number of trains is incorrect then this direction allocation of fuel and crew wages will also be incorrect.
- A. I wish you would explain what you mean by saying if the method of deriving the number of trains is incorrect.
- Q. ... You operated a method of gross ton miles?
- A. Yes, we developed by train run the volume of grain in relation to the volume of all freight traffic moving and apportioned the trains or the train miles on the basis of the gross ton miles for through trains.
- Q. If you had a run from Carman to Winnipeg running 52 times a year and if there was only 1,000 cars of grain going from Carman to Winnipeg and you could move the grain trains in 10 train loads

of 100 cars each. You would have assessed against the grain 10 trains for that Carman run. You would have taken it as a percentage of the total number of trains?

A. Yes, that is correct.

Q. So I come back to my statement that if your basis of deriving trains is incorrect then your base of direct allocation of fuel and crew wages is similarly incorrect?

A. If that is the case. "

495. We would also refer to the statement of Mr. Bandeen at page 2480, Volume 18 where he describes how trains and costs were constructed:

"...Constructive train miles used to handle the study traffic were developed based on the average weight of trains on which the study traffic moved weighted by the proportion of the study traffic to total traffic on each train-run."

496. What the C.P.R. in fact did, was to take the 1,000 cars of grain in the example used as a percentage of the total number of cars handled and then charged grain that percentage of the total trains. In other words, if there were 1,000 cars of grain and 1,000 cars of other traffic during 1958 and there were 52 trains operated from Carman to Winnipeg the study traffic instead of being charged with the 10 trains necessary to move the 1,000 cars of grain, was actually charged with 26 trains. On this basis, costs such as fuel and crew wages of 26 trains rather than the 10 were charged against grain.

497. For a full discussion of this matter, see testimony R.L. Banks, commencing at page 19225, Volume 116.

Switching Costs

498. The method adopted by the Canadian Pacific Railway in allocating switching time and the resultant cost was set out by Mr. Stenason at page 2494, Volume 18, where he states that the total switching time incurred during 1958 was based on the following information:

1. The number of cars of grain loaded at intermediate stations and each sub-division.
2. The number of cars of grain loaded at yards.
3. The number of loads of grain and grain products and their related empty movement passing through each yard.
4. The number of cars arriving and departing in milling and transit service from milling and transit yards.
5. The number of cars of grain and grain products unloaded at terminating yards, Fort William and Vancouver.

499. The time per car for services performed, handling cars from point of origin to destination, was then applied to the number of grain and grain product cars used in that service during 1958 giving the time spent switching the study traffic during 1958.

500. The Canadian Pacific Railway used an averaging method by working out the amount of time required to switch all traffic both for classification and industrial switching. First, they computed the percentage of grain cars to total traffic, then they averaged out the time per car and applied this to the number of cars that they determined to have been utilized for the study traffic. No credit was given to the study traffic for the fact that grain and grain products move largely in train load quantities which would require little or no classification in the intermediate yards; nor was any consideration given for the method in which grain is handled at various sidings; nor was any consideration or credit given for the fact that grain is switched in larger cuts of cars.

501. There was considerable discussion between Counsel for the Province of Manitoba and Mr. Stenason regarding the possible reductions in switching time due to larger cuts. At page 11813, Volume 66, reference was made to an article by Mr. Wright, appearing in "Railway Age", January 4, 1960 entitled "How Cars in Multiple Cuts Cut Costs."

Mr. Stenason stated that he was familiar with the article and that he applied the formula to the Canadian Pacific Railway and that his findings did not agree with Mr. Wright, as to the influence of size of cut on yard costs.

502. At page 11901, Counsel referred to a similar finding by Messrs. Myer, Peck, Stenason and Zwick in their book entitled "Economics of Transportation" where it is stated:

" 'One disturbing aspect of these functional relationships is the large size of the constant terms in both cases. It would be convenient to ascribe these constants to unproductive time, but such time has been excluded by definition from the data used in the analysis. Careful inspection of the data in Tables B-6 and B-7 indicates that these constants due to a substantial nonlinearity in the relationship for the smaller blocks, and particularly for blocks involving a small number of cuts. This is true of both the hump yard and flat yard operations, a fact which is best substantiated by a quick perusal of the minute-per-cut column in both tables. The time consumed for cuts seems to drop sharply as the number of cuts per block of cars is increased.' "

503. In other words, Myer, Peck, Stenason and Zwick, in their study supported the findings of Mr. Wright. Mr. Stenason confronted with these statements stated at page 11901:

"...Now, irrespective of that, the studies which we have done in Canadian Pacific have led me to revise my thinking on the matter. "

504. This statement by the Canadian Pacific Railway is contrary to all of the recent studies made in the United States as to the costing of multiple car cuts. The experts retained by the Provinces of Alberta and Manitoba made an intensive survey of the Canadian Pacific Railway's data touching upon switching time in yards. The results disclosed by this investigation is contained in the evidence of Dr. George Borts, at page 19147, Volume 116:

"...I should point out that the reason why I put so much effort into the question of multiple car cuts and the economies therefrom is from the vehement denial of the witnesses from both railway companies that anything of the sort existed. I

felt that a much greater burden of evidence in on you when you come up against the denial of people that something exists, as opposed to when you are following a line of inquiry that they have already opened up. I would appreciate it in reading this that you bear in mind that the amount of time and effort spent in this is simply the result of the fact that there is a point to be made here which I think should be fairly obvious, and that we have tried to explore it to its ultimate depth."

505. At page 19148:

" The point very simply is this, that in a switching yard, if the engine crew is cutting out two cars at once, it should not take twice the time that it takes to cut out one car.

... What I have done is to review past studies by some eminent people...Mr. Wright, Mr. Poole, Mr. Stenason and Mr. Myer."

506. At page 19152:

" The C.P.R. method of allocating switch engine time is to take the yard average classification engine minutes per car. To the extent that engine minutes per car are lower in large size cuts the C.P.R. method overstates the minutes allocable to grain cars."

507. Various tables were submitted by the witness commencing at page 19151, Volume 116. These tables indicate that average number of cars per cut in grain loads exceeded substantially the average size of cuts in all of these yards. It ranged from 2.9 cars per cut in Saskatoon to 7 cars per cut in the Souris yard. Dr. Borts explained that the C.P.R. had no recorded data identifying empty cars in grain service, and that it was not typical or common practice of the C.P.R. to classify empty cars by destination. He continues at page 19152:

" ... For this reason the average size of cut of grain carloads understates the average size of cut of all cars in the grain service. To this extent, the economies of larger cut which we estimate below are conservative, and understate the savings which are likely to occur in the grain service."

508. Dr. Borts went on to indicate the economies that could be expected in Canadian Pacific Railway operations on grain cars in different size flat yards. He submitted a table which sets out the yard average

and the grain average and cut sizes shown for both Canadian Pacific Railway and the Canadian National Railway yards. This table appearing at page 19157, Volume 116, shows that utilizing the Wright formula for flat yard switching results in a saving at yards comparable to the Calgary yard of 19.38%; yards comparable to the Saskatoon yard, 9.54%; yards comparable to the Souris yard, 31.20%; yards comparable to the Winnipeg yard, 28.08%.

509. At page 19158 Dr. Borts points out the error that Mr. Bandeen made in his calculation applying the Wright formula namely; that while Mr. Bandeen concluded correctly that there was a saving of .38 minutes of direct time in the switching of more than one car per cut, he failed to point out that it is the percentage rather than the absolute saving which must be applied. Mr. Bandeen committed the further error of applying the Wright scale, excluding overhead, to total switch engine time, including overhead at Winnipeg. Dr. Borts points out that if the Wright scale was correctly applied on the basis of data submitted by Mr. Bandeen, the savings would be 1.52 minutes per car rather than .38 minutes as determined by Mr. Bandeen.
510. At page 19177, Dr. Borts concludes that the following savings result from multiple car cuts as they apply to the handling of the study traffic and finds that the percentage reduction in total minutes per car at the Calgary yard is 19.38%; at the Saskatoon yard - 9.54%; Souris yard - 31.20%; The Winnipeg yard - 28.08%.
511. At page 19179, his conclusion as to the percentage reduction in total minutes for all yards covering the handling of 578,725 cars was 21.21%.
512. At page 19181, Dr. Borts concludes this phase of evidence as follows:
- " ... The cut sizes for grain are very likely understated for the reasons given above. In addition, the scale actually developed from the 12 observations on Calgary operations would lead to a saving in engine time which was more than double the saving we actually are using."

513. The submission of Mr. R. L. Banks at pages 19230 to 19233, Volume 116, sets out two additional elements utilized by the Canadian Pacific Railway which have over-charged grain with switching time and resultant costs. The Canadian Pacific Railway has apparently charged grain with certain elements of switching service which were not in fact performed for such traffic and the Canadian Pacific Railway erroneously computes and applies an adjustment for winter operation. It is interesting to note in regard to this item of a winter switching adjustment that in their submission of December, 1959, the Canadian Pacific Railway went to great lengths to advise the Commission that out of generosity they were making no adjustment for winter switching and that their resultant study was therefore conservative. By May, 1960, at the time of filing Exhibit 132, the same spirit of generosity was not evident and this exaggerated winter switching adjustment was included.
514. The evidence of Messrs. Borts and Banks indicates that the generosity reflected in Exhibit 132 was in favour of the Canadian Pacific Railway to the detriment of the shippers of grain.

TRAFFIC AND GENERAL

515. At page 2518, Volume 18, Mr. Stenason refers to the cost incurred for traffic and general expenses:

"... Traffic expenses are those incurred in securing traffic and pricing railway services. General expenses include items such as salaries of general officers and clerks, and pensions."

516. Exhibit 68 as filed in December, 1959, showed a cost allocated to the study traffic under these accounts of \$4,790,910. Revised Exhibit 68 based on Exhibit 132 listed traffic and general applicable to the study traffic at \$4,170,285. This item was discussed with Mr. Stenason

commencing at page 11713, Volume 66. Under the Uniform Classification of Accounts, the items listed under traffic are:

superintendence, agency, advertising, associations, industrial immigration, bureaux, insurance, stationery and other expenses being accounts 351 to 359 inclusive.

Under accounts 451 to 462, which are the general expenses, are included such items as:

general officers, clerks and attendants,
office expenses, law expenses, insurance,
pensions, stationary, other expenses and
joint facilities.

517. We went on to ask the witness what was the cost to the Canadian Pacific Railway each year in soliciting grain traffic. He answered at page 11714:

" A. There is solicitation of grain traffic.

Q. They actually seek it out, Mr. Stenason. They are looking for grain traffic?

A. Our Traffic Department spends time in connection with the movement of grain traffic.

Q. Actually soliciting the movement of the grain at statutory rates?

A. Soliciting traffic.

Q. I am interested in the grain traffic. Your traffic department actually goes out and tries to solicit increased tonnage at these very low figures?

A. Yes. Once maintenance expenses, and so forth, and the plant is undertaking to handle a certain volume, the traffic is solicited."

518. It seems fantastic that Mr. Stenason would seriously argue that the Traffic Department of the Canadian Pacific Railway would strenuously solicit grain traffic unless, as contended by the Province of Manitoba, the carriage of grain is in fact a compensatory movement to the Canadian Pacific Railway.

519. We discussed with the witness the calculations made by the advisors of the Province of Manitoba as to the breakdown of accounts under Traffic and General and the allocation made against the study traffic. (See page 11718, Volume 66.)

| | <u>Charged To Grain</u> |
|--|-------------------------|
| Account 351 - Superintendence | \$229,597 |
| Account 352 - Agencies | \$295,000 |
| Advertising Account - 353 | \$ 40,042 |
| Associations | \$ 25,919 |
| Industrial and Immigration | \$ 44,142 |
| Stationary expenses | \$ 47,143 |
| Account 451 - Covering general officers not otherwise provided for including fees and commissions paid to general officers in lieu of salary | \$128,241 |
| Account 425 - Clerks and Attendants | \$860,810 |
| Account 454 - Law expenses - | \$ 68,094 |
| Item 457 Pensions | \$1,979,940 |
| Account 458 - Stationary general | \$ 71,719 |
| Account 460 - Other Expenses | \$1,377,000 |

Charged grain with \$139,922

While charging total passengers and services with \$174,828

520. The foregoing figures were submitted to the witness, and he was asked whether in his opinion this was a proper allocation of these expenses against the study traffic. At page 11724 he answered:

" This is the allocation of Traffic and general expenses taken as a group. I would not consider it valid to break them down as you have done."

521. As one example of this arbitrary allocation, we referred the witness to the cost allocated to grain under agencies, and asked whether or not grain was being asked to pay part of the charges of the Canadian

Pacific Railway's European General Manager and also their representative in Bangkok.

522. He answered at page 11726:

"A. No, that is not correct. Grain is being asked to carry 11.82% of the total and it is not valid to break it down on an individual account basis. It means that grain may be carrying a greater share of, let us say, clerical expenses, and foreign freight traffic may be bearing the agency expenses.

Q. When you made up the figure for Traffic and General which you started off with, surely you went to your accounts; the only source of information which would bring up to a total sum would be the accounts that the C.P.R. has under Traffic and General, and I assume that the accounts they maintain under Traffic and General are the accounts are stipulated in the Classification of Accounts?

A. Yes, that is correct.

Q. And these accounts are the accounts I have mentioned -- 351 to 359 and 451 to 461 inclusive, and you went through them and came up with a total figure, and I don't care what the mental gymnastics of it are, but to be precise, the allocation of the total or any part of it was made up of these items that you allocated to Traffic and General for a proper allocation of total freight expenses?

A. Yes, total Traffic and General expenses were allocated to all types of freight and a ratio was applied to grain, and a similar ratio was available for application to other categories.

Q. A total is usually made up of parts, isn't it?

A. Yes.

Q. And the total will only be as valid as the parts? You can't put oranges into a machine and come out with apples?

A. No.

Q. Multiple regression doesn't even suggest that?

A. No.

Q. So you received a total, and the total was made up of various accounts and you apportioned part of the total?

A. That is correct -- no: we apportioned the total. We did not apportion parts of it individually. We apportioned the total as a total. "

523. It is difficult to understand a total without considering the parts that go into this total. We submit that it is similarly difficult to understand how the Canadian Pacific Railway can seriously advance the argument that while the \$4,000,000 allocated to the study traffic is valid, it is not valid to consider fully the breakdown that goes into this figure of \$4,000,000. The fact that grain should be asked to carry some of the amounts as above set out is manifestly ridiculous.

Car Days Allocated to the Study Traffic

524. This is a particularly interesting aspect of the Canadian Pacific Railway study both from the view point of arbitrariness and from the so-called precision of the Canadian Pacific Railway methods of cost allocation. In the original submission by the Canadian Pacific Railway in December, 1959, the railways estimated that costs associated with car days totalled \$15,190,283. In Exhibit 132 this sum was revised downwards to \$14,638,846.

525. The two output units that were used to determine the car days assignable to the study traffic were car miles and car days. While the car miles in both the original and the revised estimates remained at 213,831,793, the car days which under Exhibit 64 filed in December, 1959 were stated at 3,385,910 were under revised Exhibit 64 increased to 5,274,358 days or by 55.8%. This points up the degree of precision in the methods utilized by the Canadian Pacific Railway. As stated by Mr. Banks in his submission at page 19231, Volume 116, this major modification in a

fundamental measure of output, illustrates the arbitrary statistical mechanics involved in the derivation of car days devoted to hauling a commodity such as grain, which is carried in cars inter-changeably used by other traffic. The original Exhibit 64 used two different and inconsistent methods to compute car days. One method was used for the Canadian Pacific Railway system as a whole and the other method for determining those days allocable to grain.

526. It was necessary to develop a system total with which to compare grain so that a portion of repair, depreciation and other expenses recorded only on a system wide basis could be apportioned to grain. Our analysis determined that if the car day method for grain was applied to the system, it would more than double system car days. On the other hand, if the system method was applied to grain it would reduce grain car days by more than half. In either case, the result was the same: a discrepancy exceeding 100% in the number of car days assigned to the study traffic.
527. We submit that a method claimed to be the ultimate in precision which results in a discrepancy amounting to 100% in one basic output unit is suspect in all of its findings.

Cost of Money

528. The Canadian Pacific Railway in allocating cost to the study traffic during 1958 allocated a sum to cover their calculation as to the cost of money to the Canadian Pacific Railway associated with the study traffic. The figure appearing in Exhibit 66, charged to the movement of grain and grain products in Western Canada, the sum of \$11,901,751, being the alleged cost to the Canadian Pacific Railway of money based on investment in road property and equipment allocable to the study traffic in 1958. This amount was revised downward by \$56,000 in

Exhibit 132 filed in May, 1960 but the basis of the calculation remained unchanged. Mr. Stenason in filing Exhibit 66 advised the Commission that the calculation was based on multiplying the variable net investment per output unit for each category by the net cost of money at 6.5% (see page 605, Volume 18). The cost of money in investment in road property during the study period was calculated at \$4,454,000 and the cost of money on equipment at \$7,448,000.

529. The Commission will recall that when this matter was introduced, objection was taken to its introduction on the grounds that the Canadian Pacific Railway was attempting to re-introduce into these hearings a matter which had been adjudicated upon very recently by the Board of Transport Commissioners, namely, "the rate base rate of return concept" for determining earnings of the Canadian Pacific Railway. This matter was fully investigated in 1952 by the Board of Transport Commissioners and their findings set out that for the Canadian situation a rate base rate of return as applied to rail carriers was not applicable. Due to the unique characteristics of the Canadian Pacific Railway as a transportation media, the Board refused to change the present basis for rate making in Canada, namely, the requirements formula.
530. The Canadian Pacific Railway replied to this objection by the Provinces of Alberta and Manitoba by asserting that the introduction of 6.5% return on the money invested in equipment was not in fact an attempt to introduce the rate base rate of return theory. They argued that the method adopted was for the purpose of obtaining a proper cost picture of the money tied up in equipment and road facilities necessary for the movement of the study traffic in 1958. However, the witness who was called to substantiate the figure introduced by Mr. Stenason did not agree with the

reasoning of Counsel for the Canadian Pacific Railway.

531. The witness, C.W. Smith, an expert from the U.S. tendered evidence developing the increase in the cost of money over a given period of years and supported the position taken by Mr. Sterason that the cost to the Canadian Pacific Railway of money during 1958 was 6.5% and that therefore the Canadian Pacific Railway must receive on ordinary stock equity capital between 9.25% and 9.50% on the money invested in the equipment in road facilities associated with the study traffic. (See page 2875, Volume 20.)
532. The important factor that must be kept in mind in dealing with this item of expense is that we are not considering what is the cost of money in a given period; neither are we considering the amount that should be permitted the Canadian Pacific Railway in its general operations since this matter, as above stated, has been fully investigated by the Board of Transport Commissioners. The study undertaken by this Commission has been clearly defined. It is a study of the cost of carriage of grain and grain products in Western Canada during 1958. The Western Provinces did not request the study, neither did the Western Provinces determine the term of years or the geographic area that would be covered. It was the Canadian Pacific Railway who instituted this study and it was the Canadian Pacific Railway who determined that they would establish with precision the cost to the Canadian Pacific Railway of the carriage of grain and grain products in Western Canada for the calendar year 1958. Therefore, it is valueless to have the Canadian Pacific Railway attempt to establish what was the cost of capital on the market in 1958, because in the context of this investigation the Commission can have no interest whatsoever in the cost of capital in 1958. What the Commission is interested in is: what did it cost the Canadian Pacific

Railway for capital requirements in 1958? This is the basic difference between the Canadian Pacific Railway and the Provinces of Alberta and Manitoba in dealing with this item of expense. As to the effect of introducing the principle advocated by Messrs. Stenason and Smith, we refer to the cross-examination of Mr. Smith where the principle is applied to the requirements formula and to the permissive earnings of the Canadian Pacific Railway during the period in question.

533. At page 2923, Volume 21, there is a discussion of the unique character of the Canadian Pacific Railway Company as a transportation medium in comparison with companies in the United States, particularly the fact that the Canadian Pacific Railway has such large holdings of gas and oil rights, that it has the power and authority to enter into other competitive forms of transportation, and that its growth potential is therefore superior in relation to railway companies in the U.S.

534. At page 2934:

" Q. . . . Mr. Smith, I would refer you to Schedule 14 of your precis entitled: 'Rail Enterprise Net Investment, December 13th, 1958', and I note that you have calculated this net rail investment to be \$1,440,149,678. Pursuing your approach as to proper return, I take it you would suggest that the Canadian Pacific Railway received 6.5 per cent on its net rail investment?

A. . . . Essentially this is correct, but for the purpose of this case I have expressed it differently. It ought to get the compensation for the capital that is represented by that net investment with capital broken down between debt securities, preference stock and ordinary stock equity. It comes to the same thing in the end.

Q. . . . I have calculated this figure out. 6.5 per cent on the net railway investment would

return to the C.P.R. \$93,609,729, and with reference to the Board of Transport Commissioners' Judgment and Order dated November 17th, 1958, I see that they have calculated as the permissive level of earnings for Canadian Pacific, 1959, at \$55,525,000. Under your proposed plan that would mean a difference to the Canadian Pacific Railway of somewhere in the neighbourhood of \$39 million?

A. From the figures you have given, that is correct. Do you want me to comment on it or stop there?

Q. My final question is: There is little doubt that what you are suggesting is that the present requirements formula be suspended and that we introduce a rate base rate of return?

A. That is not so. I don't care how it is worked out. I would say that the capital of this country and the United States will erode away unless it is integrated and protected, and if it is not protected you are not going to get new capital to do the jobs that ought to be done unless you pay the going rate for money. It is as simple as this to me.

Q. But in your opinion the Board of Transport Commissioners should adjust their permissive rate of earnings from 55 million to 93 million?

A. We are talking about different times, of course, but in general what you say is correct."

535. It is apparent that Mr. Smith fully appreciated the implications of the Canadian Pacific Railway cost of money factor in the grain study. It is nothing but a subtle attempt to reintroduce the rate base rate of return. In the Order of the Board of Transport Commissioners dated November 17, 1958, the permissive level of earnings for the Canadian Pacific Railway was fixed at \$55,000,000. The period covered by the Board's Order coincides with the period selected by the Canadian Pacific Railway for costing the study traffic. One year later, the Canadian Pacific Railway argues before this Commission and calls Mr. Smith to corroborate that this permissive level of earnings established in November, 1958 should have been increased from \$55 million to \$93 million.

536. This matter has been more recently commented upon by the Board of

Transport Commissioners in their decision In Re-Increase in

Commutation Fares, 1959, Volume 79, C.R.C. page 273. The

Canadian Pacific Railway in an application to have commutation fares

increase included a cost of money item based on a 6.5% rate on the

investment in equipment used in the particular service. At page 295

the Judgment reads:

" An amount for cost of money was included by the Railways as an expense in the 1954 application and was discussed during the hearings of that application ... In this case C. P. included as an out-of-pocket or avoidable expense of the year 1958, an item of \$199,180 for cost of money. It was explained that this resulted from applying a rate of 6.5% which C. P. alleged is the long term cost of money to the C. P. R. enterprise to half the book value of locomotives and passenger cars used in suburban service...

In the Board's view some allowance for the cost of money expended in the purchase of equipment used in the commuter service can properly be included as an out-of-pocket or avoidable expense of operating that service. We do not accept 6.5% as a reasonable rate to use in this connection but, having regard to the cost of the equipment actually used in this service and the extent to which it has been depreciated in the Company's records, we do not believe that the amount charged in the present case is excessive."

537. The important point here is that in November, 1959 the Board of Transport

Commissioners refused to accept a rate of 6.5% as a reasonable rate to

the Canadian Pacific Railway.

538. The only evidence placed before this Commission as to the actual cost

of money to the Canadian Pacific Railway in 1958 was the evidence

tendered by experts called on behalf of the Provinces of Manitoba and

Alberta, particularly the submission of Dr. M. Ulmer, whose evidence

appears in Volume 115, commencing at page 19034. Dr. Ulmer

discusses the background to his study and the data utilized in

determining what was the cost of money to the Canadian Pacific Railway

in the period under study, namely 1958. The Commission will recall

the strenuous objections taken by the Counsel for the Canadian

Pacific Railway to the reception of this evidence on the basis that the permissive level of earnings of the Canadian Pacific Railway was not in issue. His position changed when Counsel for the Province of Manitoba referred to the above quoted evidence of Mr. C. W. Smith to the effect that the ultimate result of the Canadian Pacific Railway's introduction of 6.5% as the cost of capital in 1958 or 9.5% as the cost of equity capital during the study period would result in a change in the permissive level of earnings of the Canadian Pacific Railway from \$55,000,000 to \$93,000,000.

539. At page 19063, Dr. Ulmer discusses the matter of permissive dividends of the Canadian Pacific Railway:

" ... I shall assume that preserving the financial integrity of the company means keeping faith with the reasonable expectations of stockholders, within the limits set, of course, by the company's concomitant responsibility to meet the nation's demand for service at a reasonable cost. For the holders of preferred securities, applying this criterion means simply paying the prescribed dividend of 4 per cent. The amount of such dividend payments attributable to rail earnings has already been given in Table 3 as \$2,211,209.

In the case of common stocks there is, of course, no contractual obligation, either conditional or otherwise, to pay dividends of a particular magnitude, as there is for preferred stocks. Nevertheless, for securities of certain types, it is sensible to recognize that there is an expected yield upon which both the stock-owners and the market in general count. This is particularly true of great companies, regulated by public authority, such as the Canadian Pacific Railway, some of the larger and more stable railroads in the United States, the larger electric and gas utilities, and some other regulated concerns. Such securities are purchased primarily for the relatively safe and steady incomes they yield rather than primarily for "growth" or for possible large but uncertain speculative gains.

Such observations, at least, are borne out by the records. Over the last 10 years -- that is, from 1950 to 1959 inclusive -- the Canadian Pacific Railway

has paid a dividend of \$1.50 per share regularly, except for one year (1956) in which \$1.75 was paid. A practice of this kind itself enlists the type of investor described in the previous paragraph. We must assume that the vast majority of owners have purchased and hold the C. P. R. common stock in the expectation of a dividend of about the same magnitude as has been paid so regularly in the past.

It should be noted that in 1959 the C. P. R. common stock was priced in the market at a level very close to its par value, and that its yield of 6 percent at that price was materially greater than that prevailing for the average railroad common stock in the United States. The yield of the 25 railroad companies regularly tabulated by Moody's Investors' Service amounted to only 4.6 percent in 1959."

540. At page 19066:

" We may conclude that continued payment of a \$1.50 per share dividend by the C. P. R. would in no sense break faith with its stock holders or impair its financial integrity. "

541. Dr. Ulmer then introduced Table 6, which appears at page 19060, dealing with the capital requirements and method of obtaining this capital by American railroads:

" ...The sources of such capital may be internal, that is, generated by depreciation charges or be retained earnings after fixed expenses and dividend payments; or the sources may be external, that is, obtained through the sale of equity securities, bonds or the assumption of other forms of debt. Table 6 shows that since 1921 the railroads have satisfied nearly all their capital requirements from internally generated funds. In not one of the last four decades did external sources provide for as much as 10% of the total use of capital."

542. Table 7 at Page 19071 presents similar data for the Canadian Pacific Railway and much the same picture emerges. During the last 30 years internal sources have provided for the great bulk of capital requirements ranging from nearly 90% to 100%. Under such circumstances the need for attracting capital, so emphasized in the Canadian Pacific Railway memorandum, is minor if it exists at all. Regulatory policy

can indeed eliminate it entirely and as Table 7 demonstrates has already done so. As set out in Table 7 commencing in 1884 to 1894 when external financing accounted for 100% of the total capital requirements of the Canadian Pacific Railway, we find that in the period 1940 to 1946 external financing provided nil dollars to the total requirements of the Canadian Pacific Railway and that internal financing provided 100% of the total capital requirements of the railway. In the period 1957 to 1959 external financing accounted for 12.4% of the total capital requirements of the C. P. R. while internal financing, including depreciation charges and retained earnings, accounted to 87.6% of the total capital requirements.

543. At Page 19076 Dr. Ulmer concludes:

" A very large part of the capital requirements of the C. P. R. was built up through retained earnings, as we have seen. Yet the C. P. R. memorandum recommends that a market rate of return be applied to the firm's total assets, as though all financing had been accomplished and would continue to be accomplished by the issue of new stocks and bonds. The rate of return of 9.25 - 9.5% applied in the C. P. R. memorandum to the ordinary stock and retained earnings portion of the company's rail assets was apparently derived from the average earnings - price ratio on the securities of selective railroads in September 1959, as shown in Schedule 8 of that memorandum. But in 1959 the earnings-price ratio of C. P. common was at approximately 8%, not far under the rate for other railroads. If a return of 9.5% (after preference dividends) were realized on the Canadian Pacific's entire equity assets, including accumulated surplus or retained earnings, as the C. P. R. memorandum recommends, the earnings per share on C. P. common would rise to an astonishing 24.4%.

If the recommendations of the present report are followed, and we summarize them below, the earnings per share on C. P. R. common stock would rise from the present level of 8% to 11.7% which is in line historically with the average performance of railways in their better years."

544. Dr. Ulmer summarized the permissive earnings of the C. P. R. at \$50,745,951 and concludes this total of permissive earnings amounts to 3.5% of the aggregate capital employed in rail activities, including

communication. "In my judgment it is sufficient to meet all financial obligations of the Canadian Pacific Railway to provide for fair earnings for its owners, and to keep its property in efficient conditions."

545. It is interesting to compare this finding with the submission of the Canadian Pacific Railway to the Turgeon Commission in 1949 where, in discussing the cost of money attributable to grain in 1948 they stated at page 183:

" However, it is recognized that in the case of grain traffic, value of service considerations might suggest that the grain traffic should not make its full contribution to the return on investment but should instead contribute on the net investment in facilities required in its movement, not less than the cost to the Company of its debt capital which in 1948 was 3.58%."

546. Within 10 years the cost of money attributable to grain, has increased, according to the present Canadian Pacific submission, approximately 300 per cent.

547. Adopting these findings of Dr. Ulmer, the cost experts for the Province of Manitoba and Alberta estimated the permissive earnings of the Canadian Pacific Railway on the capital properly utilized in the movement of the study traffic in 1958 to be \$4,886,417. as opposed to the Canadian Pacific Railway's calculation, as revised, of \$11,845,395.

CONSTANT OR FIXED COSTS

548. In addition to the out of pocket or variable cost which the Canadian Pacific Railway attached to the study traffic for 1958 (which includes cost of money, depreciation and all other directly

allocable expenses,) the Canadian Pacific Railway attached to the study traffic additional costs termed fixed or constant costs. Fixed costs are those costs which, added to the variable costs, indicate the fully distributed or the total cost of a particular traffic movement. In the "precise" study submitted by the Canadian Pacific Railway in December, 1959, the non-sized related constant costs were estimated at \$9,812,923. The size-related constant cost, based on miles of track, were calculated at \$8,546,548. In what might be referred to as the more "precise" study of May, 1960, the non-size related constant costs, as calculated by the Canadian Pacific Railway, had increased in 5 months to \$12,129,843 and the size-related constant cost had decreased in 5 months to \$7,993,624. Disregarding the complete lack of precision in one or the other or both studies submitted by the Canadian Pacific Railway, we will discuss briefly the concept of constant costs in the field of railway costing, and particularly in the field of rate making. This aspect is of particular importance since this Commission is being asked to recommend a new rate structure for the study traffic. The two fields of costing involve, firstly, those costs directly assignable to a particular traffic and secondly, costs which are not directly assignable to a given traffic and which must be therefore allocated arbitrarily to the particular traffic in varying amounts.

549. As stated by Mr. Stenason at page 11776, Volume 66:

"... constant costs, by their definition, cannot be charged or traced to a particular service."

550. The Canadian Pacific Railway arbitrarily determined that 15% of the total constant cost or otherwise unassignable costs, should be assigned to the carriage of grain and grain products in Western Canada.

It is the position of the Province of Manitoba that the concept of constant costs in the context of this Commission's investigation is completely irrelevant since the Commission has undertaken to investigate the actual cost to the Canadian Pacific Railway of the carriage of grain and grain products in Western Canada in 1958.

551. The determination of what proportion of the fixed or constant cost should be borne by a particular traffic is the function of a rate making body, in Canada, the Board of Transport Commissioners.

The decision of the board will be based on such factors as set out by Dr. Edwards; namely the volume of the traffic moving, the flexibility of the movement and the total contribution that such a volume of traffic and the demands of the market will permit. We have discussed previously in this Argument at page 196 the situation in the United States in regards to the movement of coal. This is traffic of large volume moving at rates considerably below fully distributed costs and yet making the largest net contribution to railway revenues.

552. The subject of constant costs has been dealt with by the Interstate Commerce Commission over a period of years. In Statement 4-54 entitled Explanation of Rail Cost Finding Procedures and Principles Relating to the Use of Costs published by the Interstate Commerce Commission, and dated November, 1954, this matter of constant or fixed costs or fully distributed costs is discussed in detail. At page 19 the rule in the Supreme Court decision of Northern Pacific Railway vs. North Dakota is referred to, and at page 20 the following appears:

"...the Court, nevertheless, appreciated the problem of dealing with the constant expenses when it laid down the following rule. 'The outlays that exclusively pertain to a given class of traffic must be assigned to that class, and the other expenses must be fairly apportioned. It may be difficult to make such

an apportionment, but when conclusions are based on cost the entire cost must be taken into account.' "

553. The Commission continues:

" The view has sometimes been expressed that under this rule a rate, to be above a confiscatory level, must cover the assignable (out-of-pocket) costs plus some arbitrary apportionment of the constant costs. But, as economists have hastened to point out, the effect would be to give to the treatment of the constant costs a rigidity in law which they do not have in economics and cannot have in the practical aspects of rate making. The value-of-the-service (demand) factor is not identical for all freight or all markets. Prices are never based on an arbitrary apportionment of the constant or fixed expenses. Indirect expenses never burden all traffic proportionately, ton for ton, irrespective of the ability of the traffic to pay. Such an approach, indeed, would be contrary to the principle that low unit contributions to the constant costs may yield increased aggregate contributions as a result of added volume. "

554. Continuing at page 21, the Commission states:

" It appears from the preceeding citation that the Court in using the term 'fairly apportioned', did not mean that the rates should be constructed by taking the out-of-pocket costs and adding thereto, some amount which is based on a statistical apportionment of the constant or fixed cost. The Court specifically stated that the value of service (i.e. demand) should be considered. As pointed out earlier in this chapter, value of service (demand) is, indeed, the key to a 'fair apportionment' of the constant cost. "

555. The Commission concludes:

" In the first citation given above the Court stated that when conclusions are based on cost the entire cost must be taken into account. This is interpreted as meaning that the rate-maker can ignore neither the existence of the constant costs (or burden) nor the necessity of the traffic in question making a proper contribution to such costs. However, the measure of such contribution rests on value-of-service considerations and not on cost considerations. Any other concept could not be reconciled with the fundamental nature of transportation costs. "

556. In other words, the function of the cost expert or the cost analyst is to determine the direct cost allocable to the traffic under study. Once these direct costs have in fact been determined the function of the cost analyst ceases. It is then the function of the rate making body, who

have before them the economic situation and the traffic considerations, to determine what would be a fair contribution by the particular traffic to the total overhead burden of the carrier. This was corroborated and agreed to by the one independent rate expert introduced by the Canadian Pacific Railway, Dr. Ford K. Edwards, who at page 12620, Volume 71 stated:

" Q. But you haven't changed your mind one bit, Dr. Edwards, to the effect that avoidable costs, variable costs, out-of-pocket costs, whatever term you want to apply to them, is as far as cost finding can go, and that constant and fixed costs must be distributed in proportion to the ability of the traffic to bear.

A. Yes. It actually involves economic and traffic considerations.

Q. That was your opinion, Dr. Edwards, in the fresh vegetable case, and then on March, .. 1955-- you remember being cross-examined by Mr. Aldridge at West Palm Beach, in 1958 in what is commonly referred to as the Southern Governor's case ... pages 7952 to 7988. ... There was a question...:

Q. Would you in the light of your experience in transportation, Dr. Edwards, expect all commodities or all groups of traffic to produce their fully distributed costs?

A. I would expect them all to produce in proportion to their ability to pay, or stated another way, giving weight to the effect of the rates on the movement of traffic, which goes back, I think, to Section (15) a. ' "

557. The important factor is that the function of the cost expert ceases once he has determined the variable or allocable costs of the study traffic and that in the field of apportionment of constant or fixed costs the matter of traffic movement and ability to pay and economic factors generally must be considered.

558. The experts retained by the Provinces of Alberta and Manitoba dealt with this matter of constant costs in order that the Commission would

have before it cost studies which were comparable. This approach is in no way to be interpreted as an acceptance of the principle that constant costs are the proper function of the cost analyst. The Canadian Pacific Railway in their revised cost study determined the variable costs associated with the study traffic to be \$51,705,000. The experts retained by the Provinces of Manitoba and Alberta determined using the Canadian Pacific Railway data that the correct variable cost associated with the study traffic was \$34,314,044.

Revenues as determined by the cost experts
retained by the provinces was.....\$ 34,899,954

Adopting the revenue figure as stated by the
Canadian Pacific Railway, the contribution
of grain and grain products moving in Western
Canada amounts to.....\$ 1,880,746

Adopting the figures determined by the cost
experts of the Provinces, the net contribution
by grain and grain products is.....\$ 585,910

559. Accepting the more conservative figure as to the profit realized by the Canadian Pacific Railway on the movement of grain, and bearing in mind that these figures, based largely on Canadian Pacific Railway data, include such factors as solely related costs which are completely rejected by the Provinces but used herein to make a comparable study, it can be seen that the movement of grain to export positions in Western Canada far from being non-compensatory is in fact a large contributing factor to the Canadian Pacific net revenues. Moreover, the study conducted by the Canadian Pacific Railway was the study of a proportional rate - it was not a study of the through movement of grain from Western Canadian points to final destination. The study does not represent the actual total cost and contribution of the study traffic. Therefore, one must make a further addition to the net contribution from the traffic in question. To this net contribution so determined must be added the benefits received by the Canadian Pacific Railway over a period

of years from the contract of 1897.

560. It has been the view of the Province of Manitoba for many years that grain was in fact a large contributing factor to the net revenues of the Canadian Pacific Railway. This view was based to a great degree on the fact that in years when there was a large grain crop, the Canadian Pacific Railway net revenues reflected a definite upward trend and that in years when there was a poorer grain crop there was a noticeable decline in the Canadian Pacific Railway's net revenues. We refer to the evidence of Mr. C. Jefferson, then Vice-President of the Canadian Pacific Railway before the Royal Commission on Transportation on February 24, 1950 at page 16357, Volume 83:

" Q. And you would agree also, I think Mr. Jefferson, that this so-called wheat economy is of great importance to the Dominion as a whole?

A. I would agree with that, yes, sir.

Q. And have you ever noticed whether or not, Mr. Jefferson, that over the years, that generally speaking when the wheat crop has been large and the market good that the Canadian Pacific Railway has had a good year?

A. Oh, yes, naturally."

561. We would also point to the data at page 4591 - 2, Volume 31, which compare net railway operating revenue and total net revenue as related to western grain car loadings for the years 1947 to 1958.

COMPARISON OF WESTERN GRAIN CAR LOADINGS
TO THE RAILWAY "NET"

(for period 1947 to 1958 inclusive)

| Year | C.N.R. "Net Oper- ating Rev- enue (\$) | C.P.R. "Net Earnings" (\$) | Total Net (\$) | Western Grain Car Loadings (cars) | |
|------|---|-------------------------------------|----------------------|---|---|
| 1947 | 41,073,000 | 22,892,189 | 63,965,189 | 289,143 | b |
| 1948 | 26,530,000 | 18,419,166 | 44,949,166 | 257,889 | b |
| 1949 | 22,222,000 | 20,613,969 | 42,835,969 | 298,898 | b |
| 1950 | 59,834,000 | 38,020,357 | 97,854,357 | 240,060 | b |
| 1951 | 44,684,000 | 26,812,832 | 71,496,832 | 347,011 | a |
| 1952 | 40,366,000 | 28,930,780 | 69,296,780 | 431,893 | a |
| 1953 | 37,573,000 | 28,884,572 | 66,457,572 | 417,996 | a |
| 1954 | 14,172,000 | 27,032,926 | 41,204,926 | 292,075 | b |
| 1955 | 54,076,000 | 37,326,718 | 91,402,718 | 258,588 | b |
| 1956 | 71,497,000 | 41,335,827 | 112,832,827 | 356,344 | a |
| 1957 | 18,610,000 | 38,246,382 | 56,856,382 | 295,622 | b |
| 1958 | 4,926,000 | 36,491,847 | 41,417,847 | 207,090 | b |

In the above we have indicated by the letter "a" those years in which more than 300,000 cars of grain were loaded in western Canada, and by the letter "b" those years in which less than 300,000 cars of grain were loaded in western Canada. We now recap them as shown on the next page:

More than 300,000 cars of grain (a)

| Year | C.N.R. "Net Operating Revenue (\$) | C.P.R. "Net Earnings" (\$) | Total "Net" (\$) |
|-------|--|----------------------------------|------------------------|
| 1951 | 44,684,000 | 26,812,832 | 71,496,832 |
| 1952 | 40,366,000 | 28,930,780 | 68,296,780 |
| 1953 | 37,573,000 | 28,884,572 | 66,457,572 |
| 1956 | <u>71,497,000</u> | <u>41,335,827</u> | <u>112,832,827</u> |
| Total | 194,120,000 | 125,964,011 | 320,084,011 |

Less than 300,000 cars of grain (b)

| <u>Year</u> | <u>C. N. R. "Net Operating Revenue(\$)"</u> | <u>C. P. R. "Net Earnings" (\$)"</u> | <u>Total "Net" (\$)"</u> |
|-------------|---|--|----------------------------------|
| 1947 | 41,073,000 | 22,892,189 | 63,965,189 |
| 1948 | 26,530,000 | 18,419,166 | 44,949,166 |
| 1949 | 22,222,000 | 20,613,969 | 42,835,969 |
| 1950 | 59,834,000 | 38,020,357 | 97,854,357 |
| 1954 | 14,172,000 | 27,032,926 | 41,204,926 |
| 1955 | 54,076,000 | 37,326,718 | 91,402,718 |
| 1957 | 18,610,000 | 38,246,382 | 56,856,382 |
| 1958 | 4,926,000 | 36,491,847 | 41,417,847 |
| Total | 241,433,000 | 239,043,554 | 480,486,554 |

Yearly Average

| | | |
|---------------------|---------------|--------------|
| Total "Net" for (a) | \$320,084,011 | \$80,021,000 |
| Total "Net" for (b) | \$480,486,554 | 60,060,810 |

In other words, on the average, when western grain car loadings were over 300,000 cars a year the average "net" was 33.23 per cent better than when such loadings were under 300,000 cars. "

562. This data covers the period subsequent to the testimony of Mr.

Jefferson above quoted, and corroborates his statement. It is clear that when Western grain car loadings were over 300,000 cars a year, the average net was 33% better than when grain loadings were under 300,000 cars. It is submitted that if the handling of grain traffic was a deficit movement as alleged by the Canadian Pacific Railway, these figures would show a far different net revenue position.

563. We would also refer to the decision of the Board of Transport

Commissioners In Re: Domestic Grain Rates Within Western Canada, 74CRC, 113, dated December 3, 1956. At page 129, Kearney, J.

Chief Commissioner, discusses this matter of domestic rates and export rates on grain and grain products:

"...Our grain and grain products, as indeed many other commodities, to be successfully shipped for export must meet foreign competition in the world markets. The laid down price must include long haul transportation costs.

If transportation costs are too high, export will fall off and so will the revenues which the railways derive from their transportation."

564. At page 145:

" ... A loss of export traffic could have disastrous consequences to the railways as well as to the country at large."

565. If grain was in fact a non-compensatory movement, one would find it difficult to understand why the Board of Transport Commissioners in 1956 would find that a falling off of grain exports would have a disastrous effect on rail revenues.

REASONABLENESS OF RATES

566. Certain individuals, particularly the officers of the Canadian Pacific Railway, have contended that the present rates for the movement of grain to export are in themselves unreasonable. They have alleged that rates which were introduced in 1899, by that fact alone, are unreasonable rates in 1960. This method of arguing by presenting a conclusion without supporting facts has proven successful with a portion of the daily press. One of the benefits that can arise from the investigation of this Commission is to finally destroy this contention that simply because rates have existed for a long period of time, they must by that fact be unreasonable rates.

567. The first myth that must be discredited is the allegation that these rates have remained unchanged since 1899. There has been ample evidence that in fact the rates have not remained unchanged. To begin with, the rates established in 1899 were not considered reasonable by the shipper of grain and grain products. This is obvious from the fact that three years later due to agitation on the part of the Manitoba shipper, who at that date was the largest producer of grain, the Manitoba Government entered into an Agreement with the Canadian Northern Railway under which the

rate was reduced below the Crow level established in 1889.

As above stated, the present rate was finally established and has remained in existence since 1927.

568. It is further submitted that it is meaningless to look at a rate in isolation without considering the minimum weight requirements associated with that rate. For example, in 1899 when the Crow's Nest Pass Agreement became effective, the capacity of Canadian Pacific Railway box cars was 20 tons. The revenue per car from Winnipeg to Fort William based on a 20 ton capacity was \$56.00. When the 30 ton capacity cars were introduced a few years later, the revenue per car increased to \$84.00. Subsequently, upon the introduction of the 40 ton car, the revenues increased to \$112.00. With the introduction of the 50 ton car, the revenue increased to \$140.00, and more recently, with the general introduction of the 60 ton car, the revenue is at present \$168.00 per car. In other words, even if the specific rate had remained unchanged since 1899, the cost per car to the shipper for the movement of grain from Winnipeg to Fort William has risen from \$56.00 per car to \$168.00 per car with corresponding increases in rail revenue per car.
569. Another myth that should be finally put to rest is that the rate has not reflected the increased value of the commodity. Mr. Crump, President and Mr. J. Roberts, General Freight Manager, Canadian Pacific Railway, discussed at length the apparent injustice of the present rates in relation to the value of grain today as compared to 1899. Once more the facts do not support the conclusion put forward by these witnesses. At the time that the Crow's Nest Agreement was negotiated, the price of No. 1 Northern at Fort William was 99¢

per bushel and the rate from Winnipeg, under the Agreement, was 14¢ per 100 lbs. At the time that the rates were re-instated in 1925, the price of wheat was \$1.69 per bushel and the rate of 14¢ from Winnipeg to Fort William was deemed to be fair and reasonable by all parties. Within 5 years the price of wheat had dropped to 60¢ per bushel and subsequently to as low as 54¢ per bushel and even 30¢ per bushel. During this entire period the Canadian Pacific Railway, contrary to the practice in the United States, made no attempt to reduce the rate on export grain to reflect the reduced value of the commodity. On the contrary, the Canadian Pacific Railway insisted and was permitted to maintain the rates as established under the Agreement. In fact, except for the years 1937 and 1938, the price of wheat did not return to the 1897 level or higher until 1943, and today the price quoted for No. 3 Northern Fort William is approximately \$1.60 or 9¢ below the level of 1925 when the rates were re-instated. (The price of No. 1 Northern Fort William today is \$1.66 or 3¢ below the 1925 level.)

570. We refer to the examination of Mr. Roberts at page 3560, Volume 25, The danger of considering a rate without considering the minimum weight requirements was discussed and also the question of revenue per car.

" Q. Now, Mr. Roberts, will you tell us what the revenue per car of grain, Winnipeg to Fort William -- I will quote a figure and you tell us if you think it is right -- \$154.

A. That would be right based on 55 tons.

Q. Could you tell us what the revenue per car on household goods piggy-back, Winnipeg to Fort William, is, and I will give you some figures.

A. I don't have the figure.

Q. I am now quoting from Tariff No. 37, made effective March 9, 1959, 20,000 lbs., minimum 62¢ per 100, and it worked out at \$124. per car.

A. Well, we would accept that."

571. In other words, this much abused statutory rate on grain and grain products moving for export which returns \$154.00 per car creates a grave inequity on the Canadian Pacific Railway and is a burden on the Canadian shipper. However, a rate voluntarily introduced by the Canadian Pacific Railway, returning \$124.00 per car is not inequitable and does not create a burden on the Canadian freight shipper. This lack of consistency in railway policy is further underlined at page 3562-3:

" Q. And you are also pulling that 55 tons of grain and receiving \$154. as opposed to \$124. for a piggy-back car?

A. That is right.

Q. And a piggy-back rate, that is not a statutory rate, that is voluntary?

A. It is a competitive rate.

Q. But you put it in yourself?

A. That is right

Q. And you in your proposed rate , you want now in revenue per car an increase from \$154. to \$308?

A. That is right.

Q. And that, in relation to \$124. for a piggy-back car for the same mileage would, in your opinion, be a fair return for the work done?

A. That is right."

572. The final myth that must be discredited is the oft repeated statement by the Canadian Pacific Railway that the American railroads are paid much more for the services they perform in relation to the value of the commodity.

573. The validity of this approach was set forth by the witness, Roberts, in

direct examination at page 3422, Volume 24:

" Q. So in view of this, what did you do?

A. When a comparison between rate levels on similar commodities moving in Canada is not possible as an alternative rate for the movement of grain and grain products in contiguous areas has been examined as a guide. The following table, Exhibit 47, gives a comparison between the present for the movement of grain from shipping points in the United States to export positions at Duluth and Seattle and the proposed rates for the movement of Western Canadian grain for comparable distances to Fort William and Vancouver."

574. At page 3577, Volume 25, this statement is discussed by Counsel for the Province of Manitoba.

" We have examined a document published by the Interstate Commerce Commission entitled "Freight Revenue and Wholesale Value at Destination of Commodity Transported by Class 1 Railroads", and this document has the following information at Page 13.

| | | |
|---------------------------------------|---|---------|
| Average Freight rate on wheat per ton | - | \$ 6.13 |
| Average value per ton at destination | - | \$74.72 |
| Freight as a percentage of value | - | 8.2% |

The Canadian Waybill Analysis for 1958 shows:

| | |
|---|---------|
| Average freight rate per ton (statutory grain) | \$ 4.23 |
| Average price (western wheat), Fort William per ton | \$51.96 |
| Freight as a percentage of value | 8.1% |

A. Of course the United States figure covers all grain by all class 1 railroads in the United States, you are taking here the revenue from grain in Western Canada, there is quite a difference.

Q. And there is a very large portion moving under domestic rates in the United States?

A. Well, I don't know about that."

575. It is amazing that the witness would introduce the matter of freight as a percentage of price at final destination. If in the Canadian situation we

included the movement of all grain and grain products in Canada, the price-freight ratio would be more beneficial to the Canadian Pacific Railway since it would include the freight revenues on domestic rates which are considerably higher than the rate on grain and grain products moving to export. It is interesting to note that these comparisons with American railroads lost their validity for the Canadian Pacific Railway after the above cross-examination. From Volume 25 to Volume 125 no further comparisons with American railroads are made by the Canadian Pacific Railway. In fact, from this point on, when witnesses are questioned concerning rates on American railroads, the Canadian Pacific Railway made clear that the situation in the United States is different. (Since the tabling by the Canadian Pacific Railway of the figures in Volume 24, Class 1 railroads in the U.S. have reduced their rates to export position to meet St. Lawrence Seaway competition.)

Unreasonableness of Proposed Rates to
Manitoba Shipper

576. It is clear from the evidence of cost experts called by all parties to these proceedings that the one movement that involved minimum cost is the movement from points in Manitoba to Fort William. The facts are clearly set out in evidence and common sense would corroborate the evidence. The handling is done almost exclusively in solid train loads from Winnipeg to Fort William, the gathering system is not as extensive as in other provinces and since the crop is ready from one week to 10 days earlier than areas west of Manitoba, the movement to terminal commences at a period of least congestion. In addition, the distance factor and terrain favours the movement from points in Manitoba to Fort William. Since the movement of statutory grain

from points in Western Canada to export positions returns its variable cost and makes a contribution to overhead, then surely the movement of grain and grain products from Manitoba points to Fort William is a very remunerative traffic for the Canadian Pacific and Canadian National Railways. The Canadian Pacific Railway, however is seeking to have an upward revision which would result in the Manitoba shipper not only paying the inflated fully distributed costs, estimated by the Canadian Pacific Railway but in addition 33% above these fully distributed costs.

577. The railways have stated that their fully distributed costs are 1¢ per ton mile. The present rate Winnipeg to Fort William - 420 miles - is 14¢ per 100 lbs. or \$2.80 per ton which is .67¢ per ton mile. The Canadian Pacific Railway proposal would double this rate. In other words, the rate from Winnipeg to Fort William would increase to 28¢ per 100 pounds or \$5.60 per ton or a rate of 1.33¢ per ton mile. Since the railways have costed their fully distributed costs at 1¢ per ton mile, the shipper from Winnipeg is asked to pay 33% above fully distributed costs.

578. The witness, Edwards, was asked about this particular situation at page 13084, Volume 74:

" Q. We are on to the final point that I want to deal with, Dr. Edwards, and that is the method of rate making and just and reasonable rates. You have told us that the rate being asked for by the railway representing full cost is a just and reasonable rate in your opinion?

A. Yes.

Q. Would you feel that a rate 33% above fully distributed cost would be just and reasonable for moving grain in Canada?

A. I would feel that a rate 33% above the rate proposed would not be a just and reasonable rate, based on the traffic and rate making considerations as set forth by Mr. Roberts and Mr. Crump."

579. When one considers the complete failure of the Canadian Pacific Railway to substantiate their allegation that the movement of grain to export is non-compensatory, one wonders why such a proposal was ever made. This is particularly so since the proposal would burden the grain shipper with a rate reflecting fully distributed costs rather than market conditions, and other economic and traffic considerations which should govern the fixing of a rate. The answer to this question can be found in the candid statement of Dr. Ford K. Edwards where he was asked by Counsel for the Province of Manitoba, at page 12624, Volume 71:

" Q. I am interested in the fact that one of the cost studies submitted by the railroads in support of this new rate on export grain is only one of the contributing factors. What do you think of the idea of the railroads that the money, the increases should not be borne by the shipper but by the National Treasury--you as a rate-maker? What do you think that does in determining the ability to pay? Do you have any comments on that, Dr. Edwards, where the railways have stated in evidence that the farmer should not pay anymore?

A. Oh, I think it has a lot to do with the ability to pay; it does, indeed. It is a question of who pays for this--the shareholders earning a very depressed return or some other group to take on this broad burden of seeing that this grain moves. "

580. At page 12629:

" Q. I will put it again because it was part of cross-examination and I thought you told me you took into consideration when assessing full cost increase demanded by the railways the fact that the farmer would not be expected to pay them. Did I misinterpret that or misunderstand it?

A. No, you did not.

Q. ...And you took that into consideration and the fact that the traffic would continue to move, because under the C.P.R. proposal, the railway proposal, the money would be provided by the

Federal Treasury and therefore the traffic would continue to move?

A. That is right. That is the proposal here."

Conclusion

581. The above statement places in bold relief the case of the Canadian Pacific Railway. A great drama was conducted with pomp and ceremony, with the introduction of cost experts and senior officers of the corporation. When the fanfare of cost studies and dire predictions of financial ruin for the Canadian Pacific Railway had been finished, the whole case is summed up by the fact that the Canadian Pacific Railway requires a subsidy from the Federal Treasury. It would have saved the taxpayer a considerable amount of money, in time and effort if the Canadian Pacific Railway had been as candid as their leading cost expert and in September 1959 come forward and requested the subsidy they are attempting to obtain through a rate adjustment that would penalize the Western Canadian shipper. This plan of the Canadian Pacific Railway can be observed throughout the course of these hearings. The Canadian Pacific Railway knew from statements by the Prime Minister that the Western Canadian shipper would not be required to pay more due to the fact that he had a valid and binding agreement entered into on his behalf by the Government of Canada with the Canadian Pacific Railway. The Canadian Pacific Railway does have serious financial problems. They did not want to expose themselves to attack by requesting a subsidy on passenger service since as admitted by the Canadian Pacific Railway, these problems resulted from managerial decisions. The Canadian Pacific Railway also realized that the Canadian Government would not permit the extermination of a large section of the economy by pricing grain and

grain products out of the market. Therefore the Canadian Pacific Railway has come forward with this argument that export grain rates burden other traffic.

582. The Province of Manitoba submits that on legal and historical grounds, the contract of 1897 was as valid in 1958 as it was when executed, subject only to the revisions agreed upon by the parties to the revisions in 1925. It is submitted that on the basis of the cost evidence the Canadian Pacific Railway has failed to prove their allegations. It is submitted that on the basis of reasonableness of rates, the rates presently in effect are reasonable, and that far from creating a burden on other traffic, makes a contribution to the net revenue of the railway. Moreover, when considered in the context of the traffic that it generates in the westbound movement of consumer and producer commodities this grain traffic is the most valuable traffic carried by the Canadian Pacific Railway. The Province of Manitoba therefore submits that this Commission make no recommendation as to any compensation or subsidy to the Canadian Pacific Railway for the movement of export grain. If the Canadian Pacific Railway has financial problems, as we have shown in the field of passenger and branch line services, these are problems of branch lines and passenger services and not problems related to the movement of grain. If this Commission finds that financial assistance is required it should recommend a subsidy to the Canadian Pacific Railway who requires the assistance and not to the western Canadian shipper who wants to adhere to the terms of the

Agreement of 1897. It is therefore submitted that the present rates on the movement of grain and grain products to export positions remain at their present level and under the control of the Parliament of Canada.

PART FOUR

CHAPTER 8

OTHER ASSETS

Clause (a) of the Terms of Reference states:

" Whether, and to what extent, the Railway Act should specify what assets and earnings of railway companies in businesses and investments other than railways should be taken into account in establishing freight rates."

583. From the inception of this Commission, the Province of Manitoba made it clear as to what our position was in regard to this matter. We refer the Commission to page 42 of the transcript of the Preliminary Organizational Meeting:

" As to Clause (d), this is going to be, I am sure, an interesting phase of the Commission as to what other assets, because it is difficult, Mr. Chairman and Commissioners, to segregate the Canadian Pacific Railway into a transportation phase and a non transportation phase in regard to the Dominion of Canada, when the Canadian Pacific would have no existence. The very *raison d'etre* of the Canadian Pacific Railway was as a transportation medium, and it received as a result of this very large grants of land and concessions and other assets which are now rather profitable to that organization. If this is going to be considered, we may have to open the door and take a good solid look at the Canadian Pacific Railway: what was the purpose and concept behind the Canadian Pacific Railway in the furtherance of national economic policy? You might, therefore, have to conclude, after hearing this evidence, whether or not certain things were given to the Canadian Pacific Railway in the furtherance of national economic policy which are now to be brought in as other assets in determining this reference."

584. On December 4, 1959, Manitoba referred to this very important aspect of the direction from the Governor-in-Council to this Commission. We refer the Commission to page 1239, Volume 10:

" One of the other directions of the Governor-in-Council was to consider whether, and to what extent, the Railway Act should specify what assets and earnings of railway companies in

businesses and investments other than railway, should be taken into account in establishing freight rates.

At the time of the preliminary hearing we were aware of evidence of an historical nature that the Canadian National Railway and the Canadian Pacific Railway might submit to this Commission to form, in our opinion, a background or a context in which we might consider all of the grants received by the Canadian Pacific Railway, in particular, from the Canadian people through their government, and to try to analyse and assess the function of the railway in relation to the people of this country, but to restrict it to an historical survey of rail transportation problems and develop it into a consideration of the 1897 Crow's Nest Pass Agreement would, in my humble opinion, be as narrow an approach as to consider the history of Canadian political development from a perusal of the Statute of Westminster. The terms of reference are clear. We are disturbed by the fact that this is a continuation from the organizational meeting of this attitude on the part of the railways, that all harm commenced in 1897; that all railway problems really commenced with that agreement, and if that agreement is varied or rescinded a new era will dawn. We say that under the charter of the Canadian Pacific Railway I will read from the Statutes of Canada, 44 Victoria, 1881, by that Act a contract was entered into by the Canadian Government on behalf of the citizens of Canada, and the Canadian Pacific Railway on the other hand, and Section 3 of that Statute, Mr. Chairman, reads:

'Upon the organization of the said company, and the deposit by them, with the government, of one million dollars in cash or securities approved by the government, for the purpose in the said contract provided, and in consideration of the completion and perpetual and efficient operation of the railway by the said Company, as stipulated in the said contract, the government may grant to the Company a subsidy of twenty-five million dollars in money, and twenty-five million acres of land, to be paid and conveyed to the company in the manner and proportions, and upon the terms and conditions agreed upon in the said contract, and may also grant to the company the land for right-of-way stations and other purposes.' "

" Acting Chairman: That had nothing to do, of course, with the Crow's Nest Pass?

Mr. Mauro: That is right, Mr. Chairman. That is my point. This Commission is not a Crow's Nest Pass Commission, and in looking at this reappraisal of the railways and transportation in

Canada, and the role it has played in the furtherance of the national economic policy, I suggest in considering any of the historical background all of this material must be before the Commission. We say that in addition to the material we have requested, which refers to the present-day situation that if the terms of reference are to be properly approached by this Commission the railway should be further directed to supply historical data to the same extent as they have been able to present it, in detail, covering the Crow's Nest Pass Agreement, because this is not a consideration of the Prairie problems; it is a consideration of the problems of the various economic regions of this country, the Maritimes, Central Canada, the Prairies, and British Columbia."

585. Up to this date the Commission in no way inferred that there would be certain areas of the terms of reference that would be foreclosed from consideration by the provinces in their attempt to assist the Commission. The Province of Manitoba, consistent with the position taken at the organizational meeting sought information from various witnesses touching upon this matter.

586. We refer to the cross-examination of Mr. Reid, comptroller of the Canadian Pacific Railway appearing at page 2076, Volume 15:

" Q. We have had some talk about the dividends received, but the Commission has asked us not to refer to them until some decision is reached.

Now, on page 13 of your precis, the last paragraph it says:

'The cash and lands received under the Contract of October 21, 1880, were not subsidies in the ordinary sense.'

Mr. Reid, would you tell us in what sense they were subsidies?

A. The sense in which I mean is set out in the rest of the paragraph.

Q. Are you therefore suggesting that the subsidy and grants of 1880 were simply a deal based on the Dominion Government wanting to conclude the terms with British Columbia and the Canadian Pacific Railway was just the recipient of this bounty?

A. I can't agree with the way you express it.

587. Mr. Mauro then quoted to Mr. Reid the Section of the Statute of 1881 above referred to and at page 2078 asked:

" Q. Now, you tell me that when this document says that they are to receive twenty-five million in money and twenty-five million acres in land this is not a subsidy in the ordinary sense?

A. It is not a subsidy in the ordinary sense. It is an Act of Parliament that had the greatest national purpose and was for the purpose of solving a problem, not only evolving from the union of British Columbia but for the development of Canada, which was of the greatest importance to the country."

588. At page 2082:

" Q What do you think these words mean, 'the Government may grant to the company a subsidy of 25,000,000 in money.' Is that a subsidy in the ordinary sense?

A. I have not said this was not a subsidy, because the word 'subsidy' is clearly in the legislation. I have said it is not a subsidy in the ordinary sense.

Q. I would also refer you to the Dominion Bureau of Statistics Catalogue No. 52202, Canadian Pacific Railway, 1923 to 1958, under what they call 'subsidies':

'The Canadian Pacific Railway and other companies now comprising the system was granted subsidies from the Federal Government, provinces and municipalities in the form of cash and expenditures on construction. These are summarized in the following table.'

... The cash subsidies are: Federal, \$88,437,180; Provincial \$12,455,303; Municipal, \$5,261,064 making the total cash subsidies \$106,153,547. Now, do you tell me that \$106,153,547 and 43,962,546 acres of land of Canada is not a subsidy in the ordinary sense? I agree with that because I believe it is in an extraordinary sense."

589. Further, at page 2083, in our discussion with Mr. Reid concerning the original undertaking of the Canadian Pacific Railway:

" Q. Then, you state at page 14 that great risks of losses were assumed by the Company. What was the initial capital paid into the company?

A. The initial?

Q. The initial paid subscribed capital?

A. I think it is \$10,000,000, if I am not mistaken.

Q. And for that \$10,000,000 they received a \$25,000,000 cash subsidy, 25,000,000 acres of land and a line in Northern Ontario which was subsequently valued at \$37,000,000, and this was great risks of loss assumed by the company?

A. Well, there was further capital put in. After the initial capital there was considerable further capital put in before the main line was completed.

Q. Would it seem accurate that by 1922 the earned surplus of the Canadian Pacific Railway had risen to \$292,000,000?

A. I do not know that figure but it was always the practice of the company to pay out less of the year's earnings to the shareholders than was shown in the statement in order to put money back into the property for development.

Q. But I take it you and I will agree that whatever they received and whatever sense it was received under the 1881 Statute it was given and accepted for the completion and perpetual and efficient operation of the railway by the said company.

A. I do not think it would be proper for me to try to interpret the Statute, Mr. Mauro."

590. We then discussed with the witness the various other Statutes involving subsidies to the Canadian Pacific Railway. These Statutes called for the payment of a subsidy of a fixed sum per mile of road. We pointed out that these Statutes were in no way similar to the Statute of 1881 which set out the obligation of perpetual and efficient operation and maintenance of the road.

591. At page 2085:

" A. I think that type of Statute you have shown me there, that subsidy of \$3,200 a mile was the most typical.

Q. (Mr. Mauro) Yes, and I see there is a marked difference between that Statute and the Statute of 1881?

A. A marked difference, that is right."

592. We would also refer to the testimony of Mr. Crump appearing at page 3861, Volume 27:

" Q. Mr. Crump, at page 1 of your precis, the second complete paragraph:

' The early history of Canadian Pacific shows the challenges met and the difficulties overcome in establishing the railway industry in Canada. The financial obstacles in the way of railway construction in the first few decades after Confederation were so severe that the Government found it necessary to offer inducements before private enterprise was prepared to accept the substantial risks involved. It will be recalled that an attempt to build a transcontinental railway as a government enterprise failed.'

And I am sure that you meant also to tell us that private enterprise had attempted this and had not been successful and if it had not been for government assistance the Canadian Pacific Railway would not have been successful?

A. Well I would prefer to put it on a slightly different basis -- in order to attract the syndicate or group who would undertake to build a transcontinental railway, some inducement had to be offered, and whether you call it an inducement or government assistance it amounts to the same thing. It was a quid pro quo. It was part of the contract, and in the end resulted in the Transcontinental being built.

Q. But in addition to the fact that the government gave the Canadian Pacific Railway \$25,000,000 in cash, and 25,000,000 acres of land, and a constructed rail line, subsequently valued in the neighbourhood of \$37,000,000, and these were the inducements for the Canadian Pacific Railway to enter into the contract, when the construction began the financial situation of the Canadian Pacific Railway became so drastic that they came to the government and said: 'You have got to bail us out,' and, in order to do this, in 1881 the

Dominion Government lent the Canadian Pacific Railway \$34,531,000 and if it had not been for that loan, even after this private capital came in, and even after these inducements, the Canadian Pacific Railway was threatened with bankruptcy.

A. That is a matter of history, and I agree entirely."

393. And at page 3863:

Q. So that the record be clear, Mr. Crump, you agree that, far from being a simple matter of private enterprise doing a job, the Government could not build, it was an excellent illustration of Government and private enterprise joining hands for the realization of national policy?

A. Certainly I agree that the project could not have been carried out by private enterprise alone at that time, and I do not think I know of any better description of the situation that existed at that time in Canada than the article from, I believe it was the Financial Organ, in London, England, entitled 'Truth,' of 1881, where an analysis was made of this 'mad project' and that the Canadian Pacific would run, if it ever ran, through a country that was frostbound for nine months of the year and so forth.

Now, I think that adequately describes the conditions that existed at that time when, as a matter of fact, there were not as many people in all of Western Canada as there is in Winnipeg today.

Q. And as I say, both you and I agree that it was necessary and proper that if in the case of the federal government they wanted to bind this country together with a rail line, and if private enterprise could not accomplish it, that the two should join together to bring about this object?

A. Well, certainly, the government could not accomplish it alone, and it took the combination that you speak of to finally weld this country together."

394. The unique nature of the Canadian Pacific Railway Company as a transportation agency was discussed at page 3864, Volume 27:

Q. The Canadian Pacific Railway, Mr. Crump, is more than a simple investment in rail property, but is a corporate entity involving other assets in addition to the rail property; is that correct?

A. That is correct.

Q. I wondered whether your other assets shared or participated in the general prosperity?

A. At times, they did; and at other times, they certainly did not. But, fortunately, it was very fortunate for the railway that we had those other assets. But the position of the Canadian Pacific, of course, is that the railway enterprise should stand on its own feet and it was in that context that I wrote this.

Q. Should the rail enterprise stand on its own feet Mr. Crump on everything that the rail enterprise ever received?

A. I do not understand your question.

Q. I am sorry. I wondered if in this connection if the Canadian Pacific Railway feels that for example 25,000,000 acres and the \$25,000,000 and any subsequent receipts by the Canadian Pacific Railway received, because of its rail enterprise, should be grouped together?

A. Not necessarily so. What we received in 1881 was part of the contract price, it was a contract, as I understand it as a layman, and both sides of the contract were fulfilled by 1885, and now I am thoroughly convinced that, as I say, the rail enterprise must stand on its own feet.

Q. ... But we are going to be referring, as this Commission progresses, to particular aspects of that contract:
There is one rather interesting phrase where the Dominion government gives you these items that I have mentioned -- and there were some others -- for the perpetual and efficient operation of the railroad, but this is a legal matter.

A. That is right.

Q. And Mr. Sinclair and I will be discussing that?

The Chairman: I have no doubt that will be done. "

595. At page 3879:

" Q. (by Mr. Mauro) Now, is it not true that the Canadian Pacific Railway owns one of the largest single trucking companies in the highway transportation business?

A. That is right.

Q. So, you only compete with yourselves?

A. Well I would hardly express it that way; we have acquired and developed these trucking lines in the interests of bringing about an integrated transportation company, and that is the basis of getting into the trucking business.

Q. It is rather an unique situation on the North American continent, isn't it, Mr. Crump, where a single transportation agency is into the field carried by land, sea, air, and even another method of carriage by land, by highway? Do you know of any other company in North America --

A. No. As a matter of fact I might even broaden that, Mr. Mauro, to the world, because we are unique in that respect.

Q. And when the Canadian Pacific Railway starts talking about competition or the carriage of commodities it becomes rather more academic that when an American railroad starts talking about losing a high rate of traffic to the trucks, because you people yourselves are sharing in this truck transportation.

A. I must say that I don't agree with that statement, because competition is so pervasive today and our share is so insignificant that I still regard this competition from the rail point of view as very real. Now, surely we are in the trucking to a degree, but there can never be any thought of monopoly in the railway again or in any other form of transportation. It has now become a highly competitive industry and by asserting ourselves into the trucking industry we hope merely to participate to a degree in that type of service and to give our customers the type of service that he demands.

Q. Some of this high rated traffic that was lost to the Canadian Pacific Railway rail carriers, has it moved to the Canadian Pacific Railway truck carriers?

A. There is no doubt some of it has to a small degree.

Q. And are you in the business of operating steamships that carry freight also?

A. Oh yes.

Q. And how about your air transport, do they carry air cargo?

A. A very small amount, only surplus to passenger requirements."

596. By the end of January 1960, the Commission had not intimated that the provinces would be estopped from discussing this important term of reference. Therefore in the precis of evidence submitted by Premier Roblin in Winnipeg, the general approach of the Province of Manitoba to this aspect of the Commission's hearings was set out at page 4269, Volume 29:

"Q. (Mr. Mauro) The next reference is (d), and it reads:

' Whether and to what extent, the Railway Act should specify what assets and earnings of railway companies in businesses and investments other than railways should be taken into account in establishing freight rates."

Does the Province of Manitoba desire to make any submission on this phase of the inquiry?

A. Yes, sir. The Government of Manitoba is of the view that the allocation of the railway companies' income between 'rail' and 'non-rail' in the determination of financial requirements for rate-making purposes is not in accord with the historical factors pertaining to the creation of our railway system.

We wish in particular to direct the Commission's attention to the non-rail assets and earnings of the Canadian Pacific Railway. It is our submission that the Canadian Pacific Railway Company cannot properly be regarded as a dual corporation; that, although the Parliament of Canada in the enactment of incorporation and in the subsequent supplementary enactments gave to the Canadian Pacific Railway wide powers and privileges, the Company was formed in 1881 to accomplish a specific objective, to complete and operate the Pacific railway.

We submit also that the allocation of requirements between rail and non-rail income does not provide a proper guide for the determination of the financial requirements of the Canadian Pacific Railway for rate making purposes.

The Canadian Pacific Company was established as an instrument of national policy. The contract between the company and the Government of Canada dated October 21, 1880 set forth the mutual obligations."

597. Premier Roblin continued at page 4271:

"In consideration of the obligations accepted by the company, the government granted to the company a cash subsidy of twenty-five million dollars, and twenty-five million acres of land with additional lands for rights-of-way in structures. The government also transferred to the company those portions of the line which it had built through Northern Ontario from Fort William to the Red River and from Kamloops to Fort Moody in British Columbia; this completed line of seven hundred and thirteen miles was later valued at \$37,785,320. In addition, the company also received valuable duty and tax exemptions and certain exclusive territorial rights under what was known as the 'Monopoly Clause.'

We would direct the Commission's attention to the fact that the twenty-five million acres of land received by the company from the government of Canada were located entirely in Western Canada. The territorial monopoly granted to the company by the government of Canada whereby the construction of other railway lines between the main lines of the Canadian Pacific Railway south to the United States border would not be allowed was also restricted to Western Canada.

The Province of Manitoba submits that the Parliament of Canada when it established the Canadian Pacific Railway Company envisioned a corporate entity and not a corporation with a dual purpose and with the segregation of assets between the rail enterprise and the various subsidiary enterprises.

At no time since 1881 has parliament rejected or revised its original view of the Canadian Pacific Railway as a corporate entity. The Company's Charter has been revised over the years but none of the amendments have established new purposes or have altered the original objective. The wording of the various statutes amending this charter make it clear that Parliament had no intention that the company might exercise its additional powers as ends in themselves or for purposes divorced from the objective for which the company was originally formed. Parliament defined the purposes of the Canadian Pacific Railway Company in 1881 and it has been the intent of Parliament, as stated in the amending statutes, that the additional powers

granted to the Company would be exercised only as they would contribute to these purposes. The government of Manitoba therefore submits that the division of income of the Canadian Pacific Railway into 'rail income' and 'non-rail income' is not a proper division and that such segregation has never been the intent of the Parliament of Canada.'

598. For ease of reference, we reproduce a list of the controlled companies and other companies in which the Canadian Pacific Railway has an interest. This appears at Page 4273, Volume 29.

CONTROLLED COMPANIES

Transportation:

Canadian Pacific Airlines Limited
 Canadian Pacific Express
 Canadian Pacific Steamships Limited
 Canadian Pacific Transport Company Limited
 Smith Transport Limited
 Smithsons Holdings Limited
 Aroostock Valley Railroad Company
 Central Terminal Railway Company
 Duluth South Shore and Atlantic Railroad Company
 Island Freight Service Limited
 Minneapolis, St. Paul and Sault Ste. Marie Railroad Company
 Quebec Central Transportation Company
 Wisconsin Central Railroad Company

Other:

The Consolidated Mining and Smelting Company of Canada Limited
 The Alberta Stock Yards Company Limited
 Canadian Pacific Oil and Gas Limited
 Lethbridge Collieries Limited
 Midland Simcoe Elevator Company Limited
 The New Brunswick Cold Storage Company Limited
 The Scottish Trust Company

In addition to the above the Canadian Pacific Communications Department and Canadian Pacific Hotels Department are operated as a part of the Canadian Pacific Railway Company.

Other Companies

The Canadian Pacific Car and Passenger Transfer Company Limited
 Northern Alberta Railways Company
 The Pennsylvania Ontario Transportation Company
 The Public Markets Limited
 The Shawinnigan Falls Terminal Railway Company
 The Toronto Hamilton and Buffalo Railway Company
 The Toronto Terminals Railway Company
 Vancouver Hotel Company Limited

599. Canadian Pacific Oil and Gas Limited holds mineral rights to extensive acreage acquired from the Canadian Pacific Railway Company.

In the case of the controlled companies in the field of transportation, such as Canadian Pacific Transport Company Limited, Smith Transport Limited, Canadian Pacific Airlines Limited, the railway company is, in fact, in competition with these controlled companies which are engaged in the transportation of commodities and people.

600. At page 4274 of the transcript we referred to the competition between the Canadian Pacific Railway and its subsidiaries. We referred to the submission of the provinces to the Governor-in-Council on May 1, 1953 .

" The Canadian Pacific has a wholly owned subsidiary known as Canadian Pacific Transport. Canadian Pacific Transport has a wholly owned subsidiary known as Dench Transport. The Canadian Pacific has a wholly owned subsidiary, Canadian Pacific Airlines; (See the evidence of Crump, Volume 911, page 165, and Buckingham, Volume 914, page 429). These agencies are competing with the railways and these agencies are profitable. They transport freight and express, passengers and mail. Indirectly, by diverting all this traffic from the railway, these enterprises contribute to the deficit in passenger traffic and contribute to a lessening of the volume of freight and express traffic. That is to say, the parent body itself, which is the yardstick road and before the Board seeking relief by way of increased freight rates, has provided competing agencies to the railway as a carrier of freight, express and passengers. "

601. In 1959 the Canadian Pacific Railway received:

| | |
|---|---------------|
| Dividends from holdings in other companies | \$ 8,145,000 |
| Net earnings from steamships | 776,000 |
| Net earnings from hotels, communications, and other properties | 2,710,000 |
| Net income from petroleum rents and royalties | 4,857,000 |
| Net income from interests in separately operated properties | 1,950,000 |
| | <hr/> |
| Total | \$ 18,438,000 |
| | <hr/> <hr/> |

602. As late as August, 1960, the Province of Manitoba had no indication that the Commission would either accept or reject our recommendations in this regard nor had the Commission indicated their rejection of our demands for particulars which would permit us to make a responsible assessment and submission concerning term (d).

603. Letters were forwarded to counsel for the Canadian Pacific Railway and counsel for the Canadian National Railways requesting the necessary information. This information was denied us and on September 15, 1960, a motion was made on behalf of the Provinces of Newfoundland, Nova Scotia, New Brunswick, Prince Edward Island, Manitoba, Saskatchewan, Alberta and British Columbia, renewing the request for the information. At page 14772, Volume 86, Counsel for the Province of Manitoba stated:

"... I suggest that it is most difficult to do a proper job, a meaningful job, without the data which is within the knowledge of the railways; and I say that it would be, in any event, a disservice to both my Learned Friends of the railways and this Commission if the Province of Manitoba were simply to argue for reclassification of accounts without first having studied the data available and being able to submit with facts

and figures any suggested reclassification. I suggest that any study should not simply be limited to saying: ' Well, let's include all surface transportation; this is one of the arguments. You don't need any further information, Mr. Mauro. Why not just argue on principle? If you don't need any further information in connection with Smith Transport, Coastal Steamships, you don't need the data.' But I say the study should go further than that, that the recommendations of the Province of Manitoba, if it is going to deal with this problem at all, should deal with the whole matter of the assets of the Canadian Pacific Railway."

604. At page 14775:

"I certainly feel it would be difficult, if not impossible, for me to argue without the necessary data because I would think it would be unfair to the Canadian Pacific Railway, particularly, to start publicity and talk about reclassification with not specifying what assets are going to be reclassified. I think it would tend to impair the Canadian Pacific Railway's position in the money market. Loose and irresponsible talk about switching assets without some clear data to support it I think would be a very definite injustice to the Canadian Pacific Railway. For that reason I would be unable and very unwilling to argue clause (d) without having had the benefit of the results of a serious investigation of what assets, if any, are to be reclassified; what would be the affect on the Canadian Pacific Railway and what would be the affect on the rate schedule. For that reason I support the motion."

605. At page 16150, Volume 95, the Commission ruled as follows:

"As counsel for the motion were advised by the Secretary of the Commission by letter dated August 19, 1960, the Commission, through its research consultants, has been and is conducting an intensive study of the matters referred to in clause (d) of its terms of reference. The Commission is satisfied that in this way it will obtain all the information necessary to deal with clause (d) of the terms of reference, and the motion is accordingly denied."

606. We refer to the statements of counsel for the Canadian Pacific Railway at the Preliminary Organizational Meeting where at page 11 he states:

"We will take the point as firmly in such a detailed way as we can that it would be a disservice to Canada and to Canadian

transportation if businesses which the Canadian Pacific corporation happen to be in that have nothing to do with transportation were taken into account in fixing freight rates."

607. It will be noted that Counsel for the Canadian Pacific Railway restricted his statement to businesses having nothing to do with transportation. This Commission is also required to determine what assets granted to the Canadian Pacific Railway in 1881 for the specific purchase of "perpetual and efficient operation of the railway" are to be considered as rail earnings in the fixing of freight rates.
608. This Commission will have to decide whether all of the businesses having to deal with transportation in which the Canadian Pacific Railway is interested should now be reclassified as part of the assets taken into consideration in determining rail earnings.
609. We refer to the objections of the Canadian National that it would be completely unfair to that railway to take into account other assets of the Canadian Pacific Railway, since the Canadian National Railway does not have the same abundance of other assets as does the Canadian Pacific. This is an academic point as it affects the Canadian National Railway, since as a Crown corporation its deficits are met by the federal treasury. In addition to having its deficits underwritten, Canadian National has itself been the recipient of vast benefits from the federal treasury. We refer to the judgment of the Board of Transport Commissioners in the Base Rate - Rate of Return case dated February 15, 1954, where at page 30 the following appears:

"What weight they shall have is, in my opinion, left to the discretion of the Board subject to this, that after it has given full consideration to these agreements as well as to the other matter to which reference was made so often on the argument, namely, the expenditure of \$330,000,000 by the Parliament of Canada in constructing or aiding the lines now forming the Canadian National Railways ..."

610. It is our submission that the Canadian government, for purposes of national policy, instead of allowing what is now the Canadian National system to go in to receivership and acquiring the assets at a nominal figure, paid out in excess of three hundred millions of dollars to protect the investors in those railway companies. Therefore we submit that this Commission in considering this matter of earnings from other assets in the fixing of freight rates is not required to distinguish between the Canadian Pacific Railway and the Canadian National Railways.
611. Due to the limitations imposed by the decision of the Commission as to the participation of the provinces relative to this clause of the terms of reference, we repeat the recommendation of the Province of Manitoba as set forth by Premier Roblin:

"Firstly, that the Commission undertake a full examination of the non-rail assets and earnings of the Canadian railways.

Secondly, that the present Classification of Accounts be revised in order that effect be given to the clear intention of the parliament of Canada in 1880, as evidenced by contract and statute.

Thirdly, that the various transportation agencies owned by the company and not now considered as rail, be re-examined with a view to reclassifying such agencies."

PART FIVECHAPTER 9COST SCALES AND BURDEN STUDIES

Clause (e) of Terms of Reference states:

"Such other related matters as the Commissioners consider pertinent or relevant to the specific or general scope of the inquiry."

612. This Commission has been authorized and directed by the Governor-in-Council to investigate inequities and burdens in the Canadian freight rate structure and to recommend methods of alleviating such inequities and burdens. It has been the position of the Province of Manitoba from the opening hearings of this Commission that it would be impossible for the Commission to properly report to the Governor-in-Council as to the existence of inequities and burdens in the freight structure, their incidence upon the various regions of Canada, and the methods to alleviate them, until the Commission had completed a full study of the rate structure and traffic movements in Canada.

613. At the Organizational Meeting of this Commission, Counsel for the Province of Manitoba at page 41 stated as follows:

"We will want to investigate various other rates in the Dominion of Canada. My Learned Friend Mr. Sinclair suggested that a cost study had been made on the Crow's Nest Pass rates. I now want to give notice to my Learned Friend that insofar as the Province of Manitoba is concerned, we are going to strongly submit to this Commission that the Commission should not look at the Crow's Nest rate as an inequitable rate without looking at many other rates, because if we are going to start costing these rates, we want to take a look at the general transportation picture as it affects the Canadian Pacific Railway and find out where those burdens are."

614. At page 116, following a conference of counsel, the Chairman asked:

" Q. Did you take a part in this conference ?

Mr. Mauro: Yes, I did, Mr. Chairman, and I want to reiterate my feeling of concern over a change in the atmosphere that might enter into this Commission's hearing from yesterday. I want to underscore what I said yesterday ... on behalf of the Province of Manitoba, that we do approach this Commission's hearings ... with a feeling of co-operation and with an intent that the results of the Commission will benefit the whole of Canada and not one particular section. We have done some little work in the Province of Manitoba in the preparation, but we felt it would be completely impossible to constructively assist this Commission without fairly detailed information as to this question of burden and the national economic policy."

615. At page 119:

"I am only presenting this evidence ... to support our contention that there are other fields that might require investigation; that if we are to determine burdens then we must look at the whole freight rate structure."

616. At page 118:

"There is a document ... called the Waybill Analysis, which is put out annually and gives certain information. It is based on a 1% sample of traffic in Canada, and under that document we find -- I am referring to the 1958 document -- that the statutory grain rates returned an average revenue per car mile of 27¢. As we proceed through this document we note that in the case of poultry and dressed poultry there is a return of 29¢ per car mile. ... In the case of coke it is 18¢ (per car mile). Remembering always that the statutory grain rate return was 27¢, coke returned 18¢. ... Ores and concentrates returned 22¢, and the Crow's Nest Pass rates, 27¢."

Our request for this information at the time was denied.

617. On January 26, 1960, a motion by the Provinces of Alberta and Manitoba, supported by the Western Wheat Pools, and United Grain Growers, again requested information that would permit a proper study of burdens in the Canadian freight rate structure. Counsel for the

Province of Manitoba referred to the above noted statement and at page 3951 of Volume 27, stated:

" That was the position of the Province of Manitoba on the 17th and 18th of September, and it continues to be the position of the Province of Manitoba. Subsequent to those meetings we sought to do what we thought to be in the best interests of the Commission; we retained experts in the United States, and they confirmed our initial feeling, that without fairly detailed information as to the burdens and contributions to revenue, our position would be greatly handicapped.

On February 8 you will be in Winnipeg and you will hear a general outline of Manitoba's approach to the terms of reference presently before this Commission. ... regard to this motion, firstly: can the railways present this information? secondly: should they be compelled to give this information?

... I think there can be very little doubt that the railways have it within their means to prepare the information, and the decision rests with this Commission and this Commission alone as to whether or not they should be required to present this information."

618. The Commission then requested that the various cost experts meet in January in Ottawa to discuss the possibility of some compromise solution. At this meeting, chaired by Commission Counsel, no settlement of this problem was reached. Subsequently the Commission refused the motion of the provinces and the grain interests to have a proper burden study conducted by Commission staff for the other interested parties.
619. The lack of sufficient data in Canada to permit proper assessment of these problems has been clear to the Province of Manitoba for some time. Although the motion for detailed information was denied, the Province of Manitoba is still of the view that this Commission could

make an important contribution to the field of transportation economics in Canada by recommending that more detailed data be published annually by the Board of Transport Commissioners. In the submission made on behalf of the Province of Manitoba by Premier Roblin on February 8, 1960, the following statements appear at page 4223, Volume 29:

"In Canada when the Canadian Railways find that the revenue contributions from the various segments of traffic produce a total which collectively is insufficient to cover operating and overhead costs, the practice has been to apply to the Board of Transport Commissioners for permission to increase all rates to yield sufficient additional revenue to meet their requirements. This increase is calculated by raising virtually all rates by a specified percentage. Since the Board of Transport Commissioners have not interested themselves in the manner in which the railways collect these increased revenues, certain rates, first reduced to meet competition were then exempted from the subsequent general increases over a period of years, with the result that today they are unduly depressed in relation to the general rate level.

We contend that there exists in the present freight structure a number of rates which are in fact unduly depressed, which do not in fact bear their proper share of the fully distributed costs. At present before this Commission a very intensive study is being made of the railways' claim that the statutory grain rates do not return fully distributed costs. We strongly suggest that there are other rates which are at the same level or lower than the level of the statutory grain rates. We suggest that these rates must be similarly suspect. These suspect rates must be distinguished from the statutory grain rates since they are not the result of any agreement between the Canadian railways and the government or of the people of Canada. Moreover, there has been no consideration received by the railways for the implementation of these rates which can only be categorized as voluntarily depressed rates. We suggest that if the freight rate level in Canada is to be truly equitable, that if the freight rate level in Canada is to meet its objective of permitting the development of all the regions of Canada, then it should be such that one portion of the economy should not be obliged to contribute a disproportionate share to the overhead or fully distributed costs of the Canadian railways."

620. At page 4225:

"As the Commission is aware, we have requested that the railways be required to provide information to us and to our transportation consultants which would permit us to make a full investigation of particular rates. We have requested this information because it is our submission that in future before general freight rate increases are granted, the Board of Transport Commissioners should examine the overall rate structure in order to determine whether or not various commodity movements are in fact making their proper contribution to the railways' fully distributed costs."

621. Pursuant to the recommendations of the Turgeon Royal

Commission and its report published in 1951, the Board of Transport Commissioners publishes what has become known as the Waybill Analysis based on a 1% sample of waybills handled by the Canadian railways. This document has proved to be most valuable for both the railways and shippers in ascertaining various informative data regarding the movement by rail of commodities within Canada. It has now become obvious that additional data are essential if the shippers and the railways are to treat future freight rate adjustments in a constructive manner. We do not have to emphasize this matter since it has been argued at great length before this Commission. It has been the submission of the Western Provinces that unless a great deal of additional cost data were made available to us by the railways, we could not adequately perform our function before this Commission.

622. The Commission is aware that in the United States the railways are required by law to provide data to the Inter-State Commerce

Commission which permits that body to publish reports commonly referred to as "Cost Scales" and "Burden Studies." These reports enable interested parties to assess their contribution to fully distributed costs and to compare their position with that of other shippers. These studies are of equal value to the regulatory agency in fulfillment of its duty to ensure equitable treatment of all parties. It has become increasingly apparent that such data are long overdue in Canada.

623. The position of the Province of Manitoba has been supported by other provinces and various organizations. The main objection of the railways to such studies is that they take considerable time and effort on the part of the railways; that they do not have the information readily available and that the resultant studies would be of little value. As to the first objection, that of time required, we suggest that it has little merit as far as this Commission is concerned if, in fact, the data will be of material assistance to regulatory agencies, shippers and carriers.
624. Dr. F. K. Edwards, a witness called on behalf of the Canadian Pacific and Canadian National Railways, at page 12760, Volume 72, stated:

" Q. I noticed, Dr. Edwards, in many of these cases in which you have given evidence, you refer frequently to the Inter-State Commerce Commission 'Burden Studies' and 'Cost Scales' as providing basic data to you?

A. Yes.

Q. Could you explain to the Commission what these burden studies and cost scales are?

Mr. Sinclair: I object to that question as not having any relevance to the issue being discussed in the evidence being put before the Commission.

Mr. Mauro: It has a great deal of relevance which I will explain at the time of my argument.

At the time the Commission sat in Winnipeg, it is on the record that the Province of Manitoba shall make certain recommendations on this matter. Here is a gentleman called as a witness, and part of the examination that I have put in -- cross-examination -- has been upon the figures arrived at by the I.C.C. Burden Study.

The Chairman: Off the record this has been discussed.

Mr. Mauro: And on the record too, Mr. Chairman.

The Chairman: Yes; we might get Doctor's definition of it.

Mr. Mauro: Could you explain what the burden study is?

A. Well, I have in my hand the burden study which is entitled 'Distribution of Income Revenue Contribution by Commodity Group.' This burden study represents a costing under the straight unadjusted rail form procedure of all carloads of traffic in United States, performed annually, on an out-of-pocket basis and also on a fully distributed cost basis, distributing the constant passenger and L.C.L. deficit per ton and ton-mile. There are two levels of costing by individual commodity movements within and between each rate territory and compared with respect of revenues; and the amount of revenue in excess of the out-of-pocket costs is the contribution to burden -- the burden being those expenses which are not variable with the movement of an individual car of, we will say, cheese.

It provides an area indicating the degree to which under the rate structure and the impact of the various factors that go into rate-making -- it provides a degree to which the revenues equal or exceed, or, in some cases, fail to equal, the out-of-pocket cost; or, likewise the amounts either above or below the fully distributed cost, both percentage-wise and in dollar amounts.

Q. Thank you Dr. Edwards. ...

Then, I understand that the cost scales are based on the burden study?

A. Well, the burden study is based on the cost scales.

Q. So that the cost scales are a preliminary study and then the burden study is an analysis of the costs scales and found in that study?

A. It is an application of the cost scales to the traffic, without any adjustment -- as I referred to in Rail Form A Adjusted and the other studies that couldn't be done without costing simultaneously every carload in the country.

Q. I understand that in the preparation of these studies Mr. Gilbert Parr assisted you?

A. That is right.

Q. And I assume that you have found these documents of great use in your work as a consultant to both railways and shippers?

A. Well, yes; they are a guide, both used and misused.

Q. And have you any personal knowledge that such studies have injured the carriers and their operation of business -- from your own personal knowledge?

A. Well, that is a difficult question to answer. There were some objections to these studies by the carriers to the effect that there would be some misapplication or misrepresentation by parties.

Q. Have you, from your own knowledge, knowledge of an instance where actual injury has been suffered as a result of the work that you and Mr. Parr did in these studies?

A. Well, if they suffered, they suffered in silence insofar as I am concerned, except for these broad observations I have made."

625. Dr. Ernest Williams was also questioned concerning this matter and his evidence appears at page 16990, Volume 101:

"Q. I will go even further, Mr. Chairman; I am asking the opinion of the witness, who, I think, is well qualified to express an opinion, with respect as to whether this sort of thing should be introduced as a routine matter and made available to the Board of Transport Commissioners and

their economic and accounting section. That has not been closed, I hope, at all ...

Q. The ruling is that this Commission would not order the railways to provide the data at that time. That is finished; that issue is dead and concluded. I am now talking about a recommendation of this Commission which we are going to ask, that that kind of information become routine in Canada as it is in the United States. As to that, the Commission is eminently qualified to express an opinion.

Commissioner Mann: Dr. Williams, your general answer to such a question, if it were given, would follow, would it, along the lines of what you state under 'cost finding and federal transportation policies' at page 9 and 19?

The Witness: Very much so, I suspect, since we had quite an examination of this problem made at the time of that study. ...

Well, it is a question which probably calls for a rather complicated answer. I think it will be obvious to the Commission that any recommendations that ran in the direction suggested, that the cost of the service has become, and must by the nature of economic circumstances become, a more important test of successful rate making in the present competitive area, and will certainly suggest that some kind of cost finding procedures become essential. The one, in the first instance, essential to the carriers themselves, and this is the thing which our own railroads were quite reluctant to recognize because the rail cost finding problem is certainly one of the most difficult cost finding problems that can be presented in the whole field of economics. Moreover, it was not a thing traditionally necessary nor a thing the carriers were naturally prepared to come forward with. But certainly it is becoming recognized by our railroads and increasingly, I think, by shippers who are called upon to negotiate rates with carriers, as well as to contest rates and regulatory proceedings, that cost tests have become increasingly important. They have certainly with us become especially important in the matter of trying to determine in the regulatory process how low a carrier of any kind -- not just railways but other forms who may be in competition with one another -- ought to be permitted as a matter of public policy to go in making rates ...

That involves not only, obviously, a determination of what the cost of the service will be, but also an estimation of what the volume of the traffic will be, because unfortunately the behaviour of cost is related to the matter of volume."

626. Dr. Williams defined "Cost Scales" and "Burden Studies" and discussed their value and use at page 16999:

"Now, this enables us to see in a rough way, and subject to the conditions that have to attach to the cost studies themselves, what the apparent position of various commodity groups is. It serves, certainly, a kind of screening device. It is not, at its present state, I think, sufficiently acute as an analytical tool to enable us to deal with close cases without going further, but I think it has been in our case in the regulatory side and to shippers and carriers alike a very useful approach as a rough approximation, and it cannot be purport to do much more than that, unless you supplement it with some additional studies and you supplement it with some adjustments from the scale costs as shown in this publication.

627. There can be little question that from the viewpoint of usefulness, the need for such studies in Canada is acute. Some further step in costing information is required by the regulatory agencies, shippers and carriers.

628. As to the matter of whether or not the railways have the information at their disposal, it is clear that the necessary data is, in fact, available. In the case of the Canadian National Railways, it was stated that from January 1 to June 1, 1960, the Cost and Statistics Branch of the Research Department had processed 230 requests for costs, involving from one to several hundred movements each. It was further stated that there are 130 persons in the particular department and that 35 of these devote themselves to costing rail movements. (See pages 13149 - 13150, Volume 75)

629. We refer to the evidence of Mr. C. Edsforth, Vice-President of the Canadian Pacific Railway, in Volume 13, page 1836:

" Q. And then what cost figures do you look at?

A. Then we have general cost figures taken out on an overall basis by our Department of Research.

Q. And those are costs of what?

A. They are costs of hauling the traffic for various distances at various rates and in various kinds of equipment.

Q. And those costs are based on a system average?

A. Well, I do not know what the Research Department take into them. That, of course, is something I do not know.

Q. They just give you the figures?

A. Yes, they give us these figures as an overall average. They would take, I would certainly believe, all of the proper costing techniques in arriving at them."

630. The information which Mr. Edsforth refers to as forming the basis of his consideration of particular rates, is nothing more nor less than that information which forms the basis of the construction of the cost scales and subsequent burden studies by the I.C.C. in the United States.

631. The Board of Transport Commissioners, in their judgment on a recent abandonment case of the Canadian Pacific Railway, in discussing the costing techniques used by the railway, made the following observations:

" The method was originally developed by staff of the Interstate Commerce Commission and has been used by Canadian Pacific for about 20 years; it has not been used previously in abandonment cases but has been used in other cases before the Board."

632. If, in fact, some additional supporting studies are necessary, this is not an insurmountable obstacle when the resultant studies will be

of such use to the various agencies in this country.

Recommendation

633. The Province of Manitoba therefore recommends that the necessary legislative amendment be enacted directing the railways to supply to the Board of Transport Commissioners cost data in sufficient detail to enable the Board to publish annually studies similar to the "Cost Scales" and "Burden Studies" of the Interstate Commerce Commission in the United States.

CHAPTER 10CO-ORDINATING AGENCY

There is a further matter which the Province of Manitoba has put forward under "Other related matters pertinent or relevant to the specific or general scope of this inquiry."

634. At page 4276, Volume 29, Premier Roblin stated:

"We suggest that perhaps the time is now opportune for a critical re-appraisal of the federal government's administrative agencies in the field of national transportation. When one considers the very large sums of money which are expended annually by the federal government on transportation matters, the importance of efficient administration becomes readily apparent. And I would like here just to refer again, sir, to the report that was tabled at Exhibit 94, referring to the expenditure in 1958 of some two hundred and twenty million dollars by the Government of Canada in matters of this sort.

There exist at present a number of agencies and departments of government which administer particular aspects of transportation by rail, water, air, and pipeline. These agencies are: The Board of Transport Commissioners, The National Harbors Board, The Canadian Maritime Commission, The Air Transport Board, The National Energy Board. The Department of Transport has jurisdiction over a number of matters and the federal interest in highway construction is administered by the Department of Public Works in the case of the Trans-Canada Highway and the Department of Northern Affairs and National Resources in the case of roads to resources. In addition, the federal government's jurisdiction with respect to interprovincial transportation by highways is exercised by the ten provincial authorities.

This multiplicity of administrative agencies has resulted in the fragmentation of national policy and has increased the difficulty of implementing a consistent plan where the role of specific aspects is properly assessed from the standpoint of the overall policy. The very volume of specific problems constantly before present administrative bodies makes it impossible for them to undertake the necessary research with a view to future development. Rather they are obliged, by time and complexity, to deal with immediate regulatory problems. In short, our present system can only deal with

problems after they arise, rather than consider policies which might either forestall such difficulties or deal with them before the damage is such as to demand regulatory redress.

This problem of co-ordinating administrative agencies has received study both in Canada and in the United States."

635. With reference to the problem in the United States we refer the Commission to the text, "National Transportation Policy" by Charles L. Dearing and Wilfred Owen which was prepared in 1949 for the Brookings Institution in Washington. At page 384:

"Students of government relations to transportation have often pointed out a defect in our system of regulation, and that is the absence of any sufficient provision for planning and prevention. Regulation is essentially a means of curing evils after they arise. It would be better, of course, if they could be prevented in advance. There is need for foresight -- for consideration and comprehension of tendencies and trends and where they are leading, in order that those that are desirable may be encouraged and those that are undesirable discouraged.

Anyone who has served on the Commission knows that it is not well adapted to such work. Its functions are performed under quasi-judicial procedure. Its attention is occupied with specific cases which must be decided. It has little time for thought and research on broad lines. It is difficult for Commissioners to confer with parties on controversial issues, without constant need of protecting their own position in the event that they are called upon to play the part of judges and actual litigation. Planning and prevention are not matters which can well be handled at off times or as side issues. They require single-minded, concentrated attention. ...

For these reasons the creation of a national Transport

Regulatory Commission would be required to administer a revised program of public regulation applicable to all forms of transportation. The key stone of this regulatory system would be regulation of competitive rates, operating rates and structural organization of individual firms. The basic purpose of such regulation would be to prescribe the standards of rate and service competition that would assure the economic allocation of traffic among the several forms of transportation, and to guarantee impartiality in the granting and denial of operating privileges to individual firms. The Commission would, of course, retain the accounting, reporting, cost finding and other ancillary functions essential to the effective discharge of its major regulatory duties."

636. The above represents briefly the consensus of opinion as to the situation existing in the United States. The situation here in Canada is of necessity somewhat different but it has received some consideration by other bodies, particularly the Turgeon Commission in 1949. In the report of that Commission, at page 279 and 280 under the heading "Reorganization of Control," the following appears:

"It is true that Parliament's lack of jurisdiction over intra-provincial transportation presents a major obstacle to the full attainment of this most desirable object. It is of course permitted to hope that the provinces will someday agree to co-operate with the Federal authority in the carrying out of a common policy of co-ordination. Until that date comes, however, there is no reason why parliament should not proceed as far as its authority extends toward the establishment of a national transportation system functioning under the control and regulation of an efficient supervisory board. The several means of transportation - railways, airways, waterways, (highways), and now pipelines - are distinct agencies that are inseparably inter-related. They should be so regulated as to service not only individually but collectively in meeting the country's needs. ...

All this leads to the question whether the policy of close co-ordination and central control to which Parliament seemed inclined to commit itself in the Transport Act of 1938, should

not be evoked once again with a view to its extension rather than to its restriction which has been the trend of more recent enactments. If this policy of 1938 can be revised and made effective it should properly have its beginning in the establishment of a strong control organism capable of taking the task in hand. Today there are three separate bodies, each charged with the control (in more or less extensive control in each case) of a part of Canada's transportation system. They are the Board of Transport Commissioners, The Air Transport Board and The Canadian Maritime Commission. It must be difficult, with this dispersion of control, to apply to all of Canada's transportation agencies like principles of regulation for the accomplishment of a common purpose, viz, that of enabling each agency to perform its service advantageously and properly as part of a national transportation structure. The tendency of a separate independent body is to formulate policy affecting transportation without regard to the relationship for the various agencies to each other. This anomaly should give way to the constitution of a Central Authority which will be able to take in hand the major task of co-ordinated control, having at its disposal all the benefit acquired from the experience of the separate bodies in recent years.

The adoption of this policy would bring together the three above named bodies, re-organized and united and devoted henceforth to the pursuit of a well planned policy for the co-ordination and regulation of transportation."

637. Since the date of the findings of the Royal Commission on Transportation filed in 1951, we have seen the rapid development of highway transportation in Canada, the opening of the St. Lawrence Seaway, and the completion of a network of pipe lines across the nation. It is the submission of the Province of Manitoba that the need for co-ordination and unification and direction is more acute today than at the time of the above report.

Subsequent to the report of the Turgeon Commission the Royal Commission on Canada's Economic Prospects examined the question of co-ordination of the existing transportation agencies and in its final

report in November 1957 reached the following conclusion at

Page 284:

" We also believe that a more unified approach should be taken by the federal government in dealing with the transportation agencies under its control. Rather than having each transportation enterprise competing, and unequally at that, for the tax payer's dollar in order to be able to conceal the high real cost of certain of the services, we believe it sounder, cheaper and more efficient for them to provide only those services which will stand on their own feet."

638. At page 287:

" We do not think the sort of unity of transport policy we have been talking about can be achieved by some super transport body with rigid regulatory power even if there was no constitutional objections to such a scheme. We do, however, believe it can be more nearly obtained if the authorities concerned seek to ensure that each form of transport as nearly as possible pays its own way and is regulated in such a way as to prevent waste, duplication, and uneconomic rate making."

638A. The Province of Manitoba has not, nor do we now intend to advance any detailed proposal as to the structure or power of such a tribunal. This Commission we suggest can better determine these factors after due consideration but we do suggest that it should, of necessity, be regional in its representation thus permitting the proper consideration of national policies as they affect the various economic regions of Canada. Such a body would have its major task, the direction of research and planning into transportation problems in general in conjunction with, or independent of, specific agencies. In addition, we feel that at least once each year such a tribunal or board should visit the provincial capitals for hearings on general matters affecting transportation in that area and make an annual report to the Minister

of Transport. The Province of Manitoba wishes to emphasize that the province is not suggesting the establishment of a new regulatory agency which would replace the existing regulatory bodies. The present regulatory boards are in a position to discharge their administrative responsibilities in their particular fields of jurisdiction more effectively than would be possible under a new overall regulatory super agency. We wish to emphasize that we are only suggesting that the time is now opportune for examination of the need for establishing an agency that would direct research and planning into transportation problems in general with a view to recommending possible solutions to the responsible federal authorities charged with the administration of national transportation policy.

639. We are suggesting that the experience of the present Royal Commission points up that we have perhaps reached the stage in Canada where we can no longer afford the luxury of lengthy and costly proceedings such as these. It is our hope that a committee as suggested herein, having as one of its chief aims continuing study and research into the complex and technical aspects of transportation in Canada, would diminish the need for full-scale Royal Commissions, except on matters of major national importance.
640. It has been suggested that the Manitoba proposal would result in another administrative agency with additional costs to Canadian citizens. We submit that when one considers the costs to the citizens of Canada of the present Commission, in both time and money, a cost which must exceed four million dollars in total, the continuing study group as

proposed would, in the long run, be less costly and more efficient in operation.

Recommendation

641. The Province of Manitoba, therefore, recommends:

That this Royal Commission examine the necessity for co-ordinating the administration of national transportation policies with a view to providing the most efficient and economic means for transportation of people and commodities.

CHAPTER 11NORTHERN DEVELOPMENT FREIGHT RATESImpact of Freight Rates on Northern Development

642. In his Submission to the Commission in Winnipeg, the Hon. Gurney Evans, Minister of Industry and Commerce, outlined the major role of transportation and lower freight rates in the development of Northern Canada, including Northern Manitoba. (Daily Transcript, Volume 32, pages 4976-4987.)
643. Northern Manitoba has special problems, foremost of which is long distances to markets and the inordinately high costs of transportation. Development of the region therefore necessitates special measures, a number of which have been undertaken in the comprehensive program which the Government of Manitoba has initiated, in co-operation with the Government of Canada, for the economic development and expansion of Northern Manitoba. The absence of a rate structure that would stimulate development presents a particularly serious barrier to the economic development of the region. Until such time as a more favourable level of rates is instituted, development of the North can only proceed at a relatively slow pace.
644. Not only is the present freight rates structure not capable of serving the requirements of the northern areas for development but in fact it serves to aggravate the disabilities under which operations are carried out in remote areas. In consequence, it tends to discourage the economic expansion of the underdeveloped regions of Northern Canada.
645. The present high freight rates affect in particular the two primary industries which form the basis for northern economic development:

forestry and mining. The growth of import traffic through the Port of Churchill, the northern terminus of the railway, is dependent on reasonable freight rates for southbound shipments. Maximum use of the Port cannot be made under the existing rate structure.

Manitoba Proposal: Development Rates For The Canadian North

646. At pages 4986 - 7, Volume 32, the Manitoba proposal was outlined:

"Development Rates for The Canadian North: The present freight rate structure cannot facilitate maximum development of the resources of Northern Manitoba. Development of these resources will result, we submit, in increased and diversified economic activities which will provide greater rail traffic and revenues. Rate reduction will stimulate the creation of entirely new traffic -- this is the point which I made earlier and it is one which I regard as being very important -- and will increase the volume of existing traffic. There appears to be, however, a disposition on the part of the railways to conform to existing traffic patterns, administrative procedures and competitive arrangements which inhibit their ability to make the necessary adjustments in the freight rate structure.

Implementation of national policy for the economic development of the Canadian north therefore requires, in our view, the institution of development rates or alternatively a measure providing for a northern development freight rates subsidy to enable the railways to reduce the level of rates. There is precedent for such a measure of assistance in the particular national policies that are designed to assist the various regions of Canada in their economic development by means of specific subsidies from the federal government for the reduction of freight rates to shippers in these regions. Such assistance should properly be borne by the national government as part of its national development policy. It would enable the railways to institute a level of rates that would facilitate the development of the northern regions."

No Reduction in Rail Revenue

647. It is important to note that the adoption of developmental rates for northern areas need not result in a reduction in rail revenue. Class

rates are generally applicable to and from northern areas. Normally the railways do not publish lower commodity rates until such time as volume movement is assured. The cost data submitted by the witness for Manitoba at pages 15800-01, Volume 92, clearly indicate that the proposed rate reductions need not result in reduced net rail revenue. For example, ores and concentrates appearing in items 28160 and 28225 of Canadian Freight Classification 20 are rated Class 33, minimum weight, 25 tons.

648. Using these cost figures, the cost per ton for moving ores and concentrates 1,000 miles at class rates is:

| <u>50,000 lbs.</u> | |
|---------------------------------|----------------|
| Terminal Costs | \$ 62.89 |
| Line Haul Costs | 176.71 |
| Total Costs Per Car | <u>239.60</u> |
| Cost per ton at 25 tons per car | \$ <u>9.58</u> |

649. If ores and concentrates were shipped the same distance in 50 ton cars, the cost per ton would be:

| <u>100,000 lbs.</u> | |
|---------------------------------|----------------|
| Terminal Costs | \$ 64.56 |
| Line Haul Costs | 231.41 |
| Total Costs Per Car | <u>295.97</u> |
| Cost per ton at 50 tons per car | \$ <u>5.92</u> |

650. The above figures clearly illustrate that the railways could, by the simple device of offering a reduced rate in exchange for a higher minimum weight, grant northern shippers a reduction approaching 40 percent and still realize the same net revenue. It is our submission that the railways would induce a greater flow of traffic through the use of this method.

651. The Government of Manitoba therefore recommends that the Commission:

1. Examine the impact of the present railway freight rate structure on the development of the Canadian north, including Northern Manitoba.
2. Investigate the means whereby there could be instituted development rates or alternatively a northern development freight rates subsidy for shipments to and from the northern regions based on the principle underlying either the Maritime Freight Rates Act or the East-West Bridge Subsidy.

Parties Supporting Manitoba Proposal

652. At pages 5350-1, Volume 34, the Hudson Bay Route Association:

" Q. One of the other ideas put forward by the Province of Manitoba is the possibility of developmental rates in Northern Manitoba so as to encourage industrial development which should result in both the development of our part of the country and additional revenues to the railway, because it would bring about industrial expansion which would result in increased traffic to the railway; do you agree with that policy?

A. I agree with that too.

Q. One other idea that I believe Mr. Evans put forward in the field of northern development was that, if necessary, a subsidy plan be introduced by the federal government to encourage the development of this region, and this is not an unheard of method because we have subsidy schemes in the maritime regions and also covering various aspects of our national economy, and as a final attempt the Province of Manitoba has suggested, if necessary, we even introduce a subsidy scheme on the handling of rail traffic into Northern Manitoba in order to encourage this industrial expansion.

A. You mean a Province of Manitoba subsidy or a federal subsidy?

Q. No, it would be federal.

The Chairman: Thank you for your question, Mr. Gray.

The Witness: I just wanted to clarify it.

Mr. Mauro: I certainly want to clarify it too. You perhaps recall that the Arthur Little report underscored the almost essential character of transportation in the development of Northern Manitoba? As a matter of fact, I would say that in the Arthur D. Little Report they said there was no other aspect more important to the development of Northern Manitoba than transportation -- that it was the prime factor that had to be adjusted?

A. That is correct."

653. At pages 7137-8, Volume 42, the Government of Ontario:

"... This may create an injustice and an impediment to growth and development in northern Ontario and in some other parts of our province. As long as there is any cross subsidization in railway rates the burden is likely to fall upon those areas where geographical location and the character of their production tend to make them dependent upon the railway for service. Among the numerous factors which influence economic activity and emphasize the importance of railway rates in such parts of the province are the following:

- (1) The products of the extractive industries are usually comparatively low in value, so that freight charges constitute a larger component of their delivered cost than for many products of the secondary manufacturing industry.
- (2) The remoteness of these areas tends to magnify freight costs in absolute terms.
- (3) A lower density of roads and more rigorous climatic conditions make these areas more dependent on rail transportation.
- (4) The fact that a large percentage of the output originating in these areas is exported, makes it imperative for their primary industries to be able to compete in world markets.

- (5) High transportation costs tend to inhibit the development of the potential embodied in the area's vast natural resources.

A policy which penalizes progress and which seeks by over-charging on the movement of goods on some lines to compensate for loss on others will in the end prove self-defeating. Such a policy is economically unsound and fails to make the most of our opportunities."

654. At page 12460, Volume 70, the Northwestern Ontario Development Association:

"Indeed, in furtherance of national economic policy, we believe that Canada should be as much concerned with the development of its natural resources as with the problems of rail transportation. Involving as it does the haulage of great volumes of bulk commodities, the growth of the former is likely to mitigate or solve some of the difficulties of the latter. The institution of northern development freight rates to spur the use of our mineral and forest resources in the undeveloped regions of Northwestern Ontario would seem to merit consideration."

655. At pages 12463-4:

"Other regions of Canada have received concrete assistance in their development by means of specific subsidies from the Federal Government for reductions of freight rates in their respective territories. There is precedent, therefore, for similar consideration of the reasonable needs of Northwestern Ontario, as part of national economic development policy.

The Northwestern Ontario Development Association therefore recommends to the Royal Commission on Transportation that:

Development rates be instituted or alternatively a development freight rates subsidy for shipments to and from northern regions based on the principle underlying other subsidies in effect in Canada."

656. At pages 12465-6:

"Q. And in the third recommendation you suggest that development freight rate subsidies be provided. I was wondering if you had considered along that general line the possibility of direct subsidies to the industries affected, or do you think the problems can be better resolved through rail transportation assistance alone?

A. I believe we have a country that is undeveloped today, that it has most of the resources that the world needs and that these resources can be produced, can be developed and the national economic policy of this country furthered if reasonable rates can be worked out to make that kind of development possible. I realize it is a subject beyond me.

Q. The problem that is hindering your development is the matter of transportation costs. Given a solution to that, the development, in your view, would progress?

A. I think it might be safely said it is a major factor."

657. At page 12518:

"Q. At the bottom of that page, in paragraph 47, you are advocating the institution of northern development freight rates to spur the use of our mineral and forest resources in the underdeveloped regions and so on: are you restricting your advocacy of development rates to primary production, or do you also envisage development rates for secondary industries?

A. I think it would be a mighty big step forward if we could start out with the natural resources.

The Chairman: And you think they would breed secondary industries?

The Witness: Yes, we have already instances of that, in a small way, where the secondary ones are serving the primary resources."

658. At pages 12530-2, Submission by the Joint Transportation Committee,

Fort William - Port Arthur Chambers of Commerce:

"Development Rates for the North

The present freight rate structure cannot facilitate maximum development of the resources of Northern Manitoba and Northwestern Ontario. Rate reduction will stimulate creation of new traffic and will increase existing traffic. There appears to be, however, a disposition for the railways to conform to existing traffic patterns, administrative procedures and competitive arrangements which inhibit their ability to make

the necessary adjustments in the freight rate structure. Implementation of national policy for the development of the Canadian North therefore requires, in the Manitoba Government's view, and that of the Chambers of Commerce of Fort William and Port Arthur the institution of development rates or alternatively a northern development freight rates subsidy to enable the railways to reduce rates. There is precedent for such assistance in the particular national policies that are designed to assist the various regions of Canada in their development by means of special subsidies from the Federal Government for the reduction of freight rates to shippers in these regions. Such assistance should properly be borne by the Federal Government as part of its national development policy. It would enable the railways to institute a level of rates that would facilitate development of the northern regions.

The Government of Manitoba has recommended that the Commission:

1. Examine the impact of the present railway freight structure on development of the Canadian North, including Northern Manitoba.
2. Investigate the means whereby there could be instituted development rates or alternatively a northern development freight rates subsidy for shipments to and from the northern regions based on the principle underlying either the Maritimes Freight Rates Act or the East-West Bridge subsidy.

The Chambers of Commerce of Port Arthur and Fort William do hereby concur fully in the above mentioned recommendation but with the additional recommendation to the Commission that Northwestern Ontario be included as well as Northern Manitoba."

Respectfully Submitted,
On Behalf
Of The
Government
Of The
Province of Manitoba

A. V. Mauro,
Of Counsel for
The Province of Manitoba.

CHAPTER 12SUMMARY OF RECOMMENDATIONSINEQUITIES IN THE FREIGHT RATE STRUCTURE

Horizontal Percentage Rate Increases

Page 71

"That future rate increases be applied by way of cents per 100 lbs. plus a percentage increase, the cents per 100 lbs. factor to reflect increased terminal costs, the percentage factor to represent increased line haul costs."

Regulation of Water Rates

Page 87

"That water carriers be required to apply and show cause for any proposed rate increases and that in such applications, the rates be established on the financial requirements of the water carriers without reference to the rates of other modes of transportation.

That the through rate on a shipment carried by more than one type of carrier should reflect the relative rate characteristics of each type of carrier to the extent that each has participated in that movement."

Discrimination Under the Long and Short Haul Clause

Page 109

"That the railways should not be permitted to select the centers which will be allowed to compete in a given market.

When a competitive rate is published from a more distant point, the intermediate point should be given a rate reflecting its shorter haul to the same destination, that is, a rate reflecting its geographic location.

Normal relations between shipping points to a given market should be generally maintained. In other words, the rate from Winnipeg to Vancouver should be lower than the rate from Toronto to Vancouver on the same commodity and similarly the rate from Winnipeg to Toronto should be lower than the rate from Vancouver to Toronto on a given commodity."

Inter-Line Rates

Page 119

" Where freight rates are based on mileage they should be based between all stations in Canada on the shortest through mileage regardless of whether or not it is necessary in the course of the movement to transfer the goods from one railway to another."

BURDENS IMPOSED BY LAW OR PUBLIC POLICY

Passenger and Related Services

Page 149

" That the railways should continue to achieve efficiencies by the elimination of duplicate services and by whatever other means are available to them.

As to the actual net losses resulting from trunk line passenger and related services, if such services are deemed to be in the national interest, then these losses should be met from the national treasury.

These losses for all future purposes and in particular for the purposes of setting freight rates, should be removed from the railways' Classification of Accounts."

Commuter Services

Page 150

" Unprofitable commuter services should be either abandoned upon application of the railways or that losses on such services, which we define as revenue being less than out-of-pocket costs for each particular service, should be underwritten by the municipalities affected.

In future, the Uniform Classification of Accounts be varied so as to exclude commuter services net losses for rate making purposes."

Branch Line Operations

Page 151

" There should be created a Branch Line Trackage Maintenance Fund to cover the maintenance costs of those branch lines which are shown to be non-compensatory, but which must be maintained in the national interest."

Statutory Rates on Export Grain

Page 263

" That this Commission make no recommendation as to any compensation or subsidy to the Canadian Pacific Railway for the movement of export grain. If the Canadian Pacific Railway has financial problems, as we have shown, in the field of passenger and branch line services, these are problems of branch lines and passenger services and not problems related to the movement of grain. If this Commission finds that financial assistance is required it should recommend a subsidy to the Canadian Pacific Railway who requires the assistance and not to the western Canadian shipper who wants to adhere to the terms of the Agreement of 1897. It is therefore submitted that the present rates on the movement of grain and grain products to export positions remain at their present level and under the control of the Parliament of Canada."

OTHER ASSETS

Page 279

" That the Commission undertake a full examination of the non-rail assets and earnings of the Canadian railways.

That the present Classification of Accounts be revised in order that effect be given to the clear intention of the Parliament of Canada in 1880, as evidenced by contract and statute.

That the various transportation agencies owned by the company and not now considered as rail, be re-examined with a view to reclassifying such agencies."

COST SCALES AND BURDEN STUDIES

Page 291

" That the necessary legislative amendment be enacted directing the railways to supply to the Board of Transport Commissioners cost data in sufficient detail to enable the Board to publish annually studies similar to the "Cost Scales" and "Burden Studies" of the Interstate Commerce Commission in the United States."

CO-ORDINATING AGENCY

Page 297

" That this Royal Commission examine the necessity for co-ordinating the administration of national transportation policies with a view to providing the most efficient and economic means for transportation of people and commodities."

NORTHERN DEVELOPMENT FREIGHT RATES

Page 301

" That the Commission examine the impact of the present railway freight structure on development of the Canadian North, including Northern Manitoba and

Investigate the means whereby there can be instituted development rates or alternatively a northern development freight rates subsidy for shipments to and from the northern regions based on the principle underlying either the Maritimes Freight Rates Act or the East-West Bridge subsidy."

FOOTNOTE REFERENCE SHEET

| <u>Footnote Number</u> | | <u>Page Number</u> |
|------------------------|--|--------------------|
| (1) | Daily Transcript, Vol. 29, February 8, 1960, pp. 4194 - 5. | 1 |
| (2) | Daily Transcript, Vol. 29, February 8, 1960, p. 4197. | 2 |
| (3) | Report of the Royal Commission on Dominion-Provincial Relations, 1940, Book I, page 48. | 6 |
| (4) | W. L. Morton, "Railway and Railway Rates In National Policy In Canada, 1849 - 1959", Submission On Behalf of Government of Manitoba, Daily Transcript, Vol. 30, February 9, 1960, pp. 4416-7. | 7 |
| (5) | Canada Year Book, 1959, page 826. | 8 |
| (6) | Ibid. pages 824 - 825. | 8 |
| (7) | Report of the Royal Commission on Dominion-Provincial Relations, 1940, Book I, p. 28. | 11 |
| (8) | Report of the Royal Commission on Dominion-Provincial Relations, 1940, Book I, p. 48. | 12 |
| (9) | House of Commons Debates, 1880, I, p. 5. | 12 |
| (10) | Ibid., p. 486. | 12 |
| (11) | 44 Victoria, Chap. 1, Section 7. | 12 |
| (12) | 42 Victoria, Chapter 9, Section 17. | 14 |
| (13) | W. L. Morton, Daily Transcript, Vol. 30, February 9, 1960, p. 4428. | 15 |
| (14) | Report of the Royal Commission on Dominion-Provincial Relations, 1940, Book I, p. 68. | 15 |
| (15) | Report of the Royal Commission on Dominion-Provincial Relations, 1940, Book I, p. 68 | 15 |

| <u>Footnote Number</u> | | <u>Page Number</u> |
|------------------------|--|--------------------|
| (16) | House of Commons Debates, Volume XLV, June 18, 1897. pp. 4558-9. | 16 |
| (17) | Canada, House of Commons Debates, Volume LXI, July 30, pp. 7659 - 60. | 18 |
| (18) | Canada, House of Commons Debates, Volume LXI, July 30, 1903, p. 7685. | 18 |
| (19) | Statutes of Canada 1903, 3 Edward VII, C. 71, (Sec. 42) | 19 |
| (20) | W. T. Easterbrook and H. G. J. Aitken, Canadian Economic History, Toronto, 1956, pp. 436 & 7. | 19 |
| (21) | Ibid., p. 437. | 19 |
| (22) | Canada, House of Commons Debates, Vol. CXXV, May 8; 1916, p. 3564. | 20 |
| (23) | Report of the Royal Commission to Inquire into Railways and Trans- portation in Canada, Ottawa, 1917, P. XLV. | 20 |
| (24) | W. L. Morton, Daily Transcript, Vol. 30, February 9, 1960, p. 4440. | 21 |
| (25) | Royal Commission on Railways and Transportation in Canada, 1931 - 32, p. 21. | 22 |
| (26) | W. L. Morton, Daily Transcript, Vol. 30, February 9, 1960, pp. 4435-6. | 23 |
| (27) | W. L. Morton, Daily Transcript, Vol. 30, February 9, 1960, pp. 4436 - 7. | 24 |
| (28) | 15 - 16 George V, Chap. 52. | 24 |
| (29) | House of Commons Debates, 1925, V. P. 4307. | 24. |

| <u>Footnote Number</u> | | <u>Page Number</u> |
|------------------------|--|--------------------|
| (30) | 14 George V Chap. 44. | 25 |
| (31) | Report of The Royal Commission on Transportation, 1951, p.253. | 26 |
| (32) | Daily Transcript, Vol. 30, February 9, 1960, p.4443. | 26 |
| (33) | <u>Hansard</u> , March 15, 1956. | 28 |
| (34) | A Statement by the Hon. Alvin Hamilton, Minister of Northern Affairs and National Resources, on the Philosophy and Principles of the National Development Program, Ottawa, January, 1960. | 28 |
| (35) | A Statement by the Honourable Alvin Hamilton on the Philosophy and Principles of the National Development Program, Ottawa, January, 1960. | 31 |
| (36) | W. L. Morton, Daily Transcript, Vol. 30, February 9, 1960, p. 4445. | 31 |
| (37) | Report of the Royal Commission on Transportation, Ottawa, 1951, p. 47. | 32 |
| (38) | Report of the Royal Commission on Maritime Claims, Ottawa, 1927, pp. 26 - 27. | 33 |
| (39) | Daily Transcript, Vol. 29, February 8, 1960, pp. 4210 -11. | 35 |
| (40) | House of Commons Debates, Official Report, Vol. 103, No. 49, 2nd Session, March 24, 1959, pp.2207-8. | 36 |
| (41) | See testimony of V.M. Stechishin, re latest ICC increase, page 15603, Volume 92. | 47 |
| (42) | Daily Transcript, page 4234, Volume 29. | 47 |

Footnote Reference Sheet

| <u>Footnote Number</u> | | <u>Page Number</u> |
|------------------------|--|--------------------|
| (43) | 20 C.R.C. page 177 | 89 |
| (44) | Proceedings of the Special Committee of the Senate, No. 12, Tuesday, May 24, 1938. | 173 |
| (45) | Report of the Royal Commission on Transportation, February, 9, 1951, page 243. | 174. |

Hon. C. P. McTaggart

ROYAL COMMISSION

ON

TRANSPORTATION

SUMMATIONS AND ARGUMENTS

VOLUME No.:

2

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THE MARITIMES TRANSPORTATION COMMISSION

AUTHORIZED BY THE GOVERNMENTS OF
NOVA SCOTIA, NEW BRUNSWICK, PRINCE EDWARD ISLAND
AND NEWFOUNDLAND
AFFILIATED WITH THE MARITIME PROVINCES BOARD OF TRADE

SUMMATION AND ARGUMENT

OF THE

MARITIMES TRANSPORTATION COMMISSION

BEFORE

THE ROYAL COMMISSION ON TRANSPORTATION



INTRODUCTION

The Maritimes Transportation Commission appreciates this opportunity to present Summation and Argument in relation to the evidence placed before your Commission.

For ready reference, evidence of the Maritimes Transportation Commission including its witnesses is found in

| | |
|--------------------------------|--------------------------------|
| Volume 83, Pages 14367 - 14483 | Volume 84, Pages 14484 - 14616 |
| Volume 83A, Pages 1 - 146 | Volume 85, Pages 14617 - 14703 |

Submission of the Atlantic Provinces Governments and other Atlantic Industry presented to the Royal Commission on Transportation during its regional hearings are found in

| | |
|---------------------------|-----------------------------|
| Volume 3, Pages 209 - 347 | Volume 7, Pages 796 - 915 |
| Volume 4, Pages 348 - 513 | Volume 8, Pages 916 - 1041 |
| Volume 5, Pages 514 - 630 | Volume 9, Pages 1042 - 1197 |
| Volume 6, Pages 631 - 795 | |

In addition, the submission of Dominion Steel and Coal Corporation and evidence of Mr. E. Pepper, on behalf of the Nova Scotia Government, is found in

| | |
|--------------------------------|--------------------------------|
| Volume 85, Pages 14703 - 14746 | Volume 87, Pages 14880 - 14929 |
| Volume 85A, Pages 1 - 42 | Volume 90, Pages 15412 - 15456 |
| Volume 86, Pages 14801 - 14872 | |

The case of the Atlantic Provinces has been extensively covered, not only by the Brief of the Maritimes Transportation Commission, but by submissions of various parties to the Royal Commission on Transportation during its Atlantic Provinces hearings and by Dominion Steel & Coal Corporation Limited at the Ottawa hearings.

The Maritimes Transportation Commission does wish, however, to summarize its case and comment briefly on certain matters which were presented to the Royal Commission on Transportation.

MARITIME FREIGHT RATES ACT

The Maritimes Transportation Commission called for an up-dating of the Maritime Freight Rates Act by superimposing upon it a "Rate Difference" method of subvention to provide Atlantic Industry with transport costs to the markets of Ontario and Quebec roughly equal to the prevailing transport costs from producing points nearer those markets.

The proposal for up-dating the Maritime Freight Rates Act had as its three requirements:

1. It must be able to bridge the rate gap between Maritime and Central Canadian producers in the important market of Central Canada.
- 2.. It must do this over time and must, therefore, contain a mechanism which will compensate for rate distortions arising (a) from disparities in the intensity of carrier competition in the two territories and (b) from horizontal percentage rate increases.
3. It must not deprive Atlantic Provinces shippers of the opportunity of availing themselves of services and rates of carriers other than the railways.

The Commission's brief recommended that the rate gap between the Maritime and the Central Canadian producers in the important markets of Central Canada be bridged by the application of the "Rate Difference" subvention to the total rate. This "Rate Difference" subvention would be in addition to the present subvention paid on the portion of the rate under the Maritime Freight Rates Act.

The rate difference subvention would be in recognition of the circumstances and conditions which have arisen as a result of the growth of competition in transportation, particularly in Central Canada, and which has rendered the Act in its present form less & less able to provide the intended statutory protection for Atlantic industry in the central markets.

The brief set out a method of rate level measurement by calculating average rates and the percentage reduction required to bridge

the rate gap from data contained in the Board of Transport Commissioners Annual Waybill Analyses. Based on the 1958 Waybill Analysis the percentage reduction required was 31.3%. (See Table 4, Transcript of Evidence, Volume 83A, Page 86).

The figures contained in Table 4 of the Commission's brief illustrate the average rate difference between traffic moving from the Maritimes to Eastern Territory versus traffic moving within Eastern Territory.

In the respectful submission of the Maritimes Transportation Commission it is this average rate difference which must be eliminated if Atlantic Provinces industry is to compete in the Central Canadian market on more equal terms transportation-wise.

The Maritimes Transportation Commission submission dealt extensively with the historical aspects of the Atlantic Provinces case in Chapters 1 and 11 of the brief and, as was pointed out, in return for the promise to join Confederation a rail link was provided between the Maritimes and Central Canada. A policy of low rates was established on traffic moving over the railway in fulfillment of the commercial purpose of the construction of the Intercolonial Railway - to paraphrase the Royal Commission on Maritime Claims - to allow Maritime industry access to the principal markets of Canada.

What this favourable rate structure meant in practice can be seen from a comparison of the 5th Class rates from Halifax to Montreal with those from Toronto to Montreal immediately prior to the change in the I.C.R. rate structure made in 1912. At that time the rate from Halifax to Montreal (for a distance of approximately 837 miles) was 25¢ per 100 lbs. The rate from Toronto to Montreal (for a distance of 335 miles) was 22¢ per 100 lbs.

Between 1912 and 1926, the period reviewed by the Royal Commission on Maritime Claims, these favourable rate differentials between

Maritime shippers and Central Canadian shippers disappeared and the originally lower Maritime rates were first brought up to the Eastern Canadian rate level and then increased in consonance with it. As a result of the findings of the Duncan Commission, the Maritime Freight Rates Act was passed which partially restored the former rate relationships.

Historically, therefore, there is ample precedent for a de-emphasis of distance as a factor in rate making on Atlantic Provinces traffic.

These Confederation promises, although made almost a century ago, are no less valid today than they were at that time. Nor are they any less valid today than in 1927 when the Maritime Freight Rates Act was passed as a result of the Royal Commission on Maritime Claims recommendation which was based on the Confederation pronouncements and promises.

Indeed, the situation today is not unlike that which the Duncan Commission reviewed 34 years ago. Since the enactment of the Statute, Maritime rates have been subject to the same authorized increases applied generally throughout Canada, but have failed extensively to qualify for the many competitive rate reductions and hold-downs which have been given particularly to traffic moving in Central Canada. As a result Atlantic industry once again is faced with a transportation handicap in obtaining access to the principal markets.

A striking example of this may be found in the brief of Dominion Steel & Coal Corporation. Because the Corporation's major works are located in the Atlantic Provinces, far removed from the principal steel consuming markets in Canada, post war rate increases plus competitive hold-downs in Central Canada have seriously affected the Company's competitive position vis-a-vis producers located in the principal market. To illustrate, the differential per Gross Ton on Iron and Steel Articles in the Toronto market before the succession of

post war rate increases in 1948, was \$9.40, Sydney over Hamilton. By the end of 1958, this had more than doubled to \$23.97. The present differential, including the Freight Rates Reduction Act, amounts to \$21.73. Similarly, the differential per Gross Ton on Iron and Steel Bars to Brantford, Ont. increased during the same period from \$8.29 to \$20.38 including the Freight Rates Reduction Act⁽¹⁾.

Other similar examples can be readily found in the DOSCO brief which reflect the worsening of the Corporation's position in the central markets due to post war increases in freight rates and intense carrier competition in Central Canada.

Other manufacturing industries in the Atlantic Provinces, also dependent on the principal markets, have experienced similar deterioration in their rate relationship with Central Canadian industry and for the same reasons, as was clearly pointed out in Appendix V of the Maritimes Transportation Commission submission.

The Maritimes Transportation Commission's case for an additional transportation subvention to enable Atlantic industry to compete on more equal terms in the concentrated markets of Central Canada with industry located within that important market is not based on historical precedent alone. It is based equally firmly on the failure of this region to grow and prosper at a rate equal to other regions of the country and the nation as a whole, a fact which, in the opinion of this Commission, is inextricably tied up with the transportation factor.

At one time, the Atlantic Provinces were one of the most prosperous regions of the country with foreign markets available at the end of cheap and convenient ocean trade routes. Confederation and the realigning of trade in an east - west direction as a result of tariff and transportation policies, changed all this, to the disadvantage of the Atlantic Provinces. Once the tariff established the new pattern of trade it remained for transportation, by and large and most certainly in the case of the Atlantic Provinces to strengthen and encourage a

(1) Appendix 3, Submission of the Royal Commission on Transportation (1959) by Dominion Steel & Coal Corporation.

natural flow of trade between all regions of the country. To the extent that the tariff contributed to the growth and buildup of industry in Central Canada, it discouraged similar development in the Atlantic Provinces while at the same time increasing the dependence of Atlantic industry on the central markets. The passing years have increased this dependence as the central markets themselves have grown and expanded, while those of the Atlantic Provinces have remained small and widely scattered. An additional factor contributing to this dependence has been the loss of the region's traditional export markets in more recent years.

Hence transportation has come to assume crucial importance to the economy of the Atlantic Provinces in relation to present-day markets and while it would be unfair to single out transportation as being solely responsible for the lag in economic growth, there can be little doubt that it has been an important contributing factor. This is clearly revealed from an analysis of appendix 1X of the Maritimes Transportation Commission's submission pertaining to the Atlantic Provinces economy. It is pointed out that most of the industries in the Atlantic Provinces are resourced-based industries, i.e., farming, fishing and logging, with most of the secondary industry engaged in the processing of the resources of these basic industries. Moreover, the labour requirements of the primary industries are declining and the resource-based industries have not been, and unlikely will be, able to absorb the natural increase in the Atlantic Provinces labour force and those persons displaced from the primary industries.

The significance of this is revealed in the employment figures of other manufacturing i.e. non-resource-based. Between 1949 and 1957, other manufacturing employment increased by 20.3% in Ontario, 14.7% in Quebec (18% in the two provinces combined) 17% in the Prairie Provinces and 28% in British Columbia. In the Maritimes, on the other hand, the increase was only 1%.

As Appendix 1X points out (Page 9 and 10):

"Thus, in the other regions of Canada, in addition to the resource-based industries, construction activity and the services, other manufacturing has served as an avenue of employment for workers being displaced, in the course of development, from primary occupations and for workers entering the labour force for the first time. In the Atlantic Provinces not only are investment and resource-based activity proceeding at a lower rate, but other manufacturing has, since 1949, been of almost negligible importance in providing new employment."

It is interesting to note the conclusions of the Royal Commission on Canada's Economic Prospects in this regard:

"...one of the most striking features of the economy of the Atlantic Provinces is the disproportionately large number of people engaged in marginal activities, subsistence farming, fishing and logging, or some combination of these. Such occupations are the source of the low incomes which seriously affect average earnings in the region. This prevalence of subsistence occupations in the Atlantic Provinces is in part a symptom of more basic problems. Elsewhere in Canada these occupations are often associated with the fringe of the more highly developed and expanding areas. But in the Atlantic Provinces the phenomenon is more closely related to a lag in economic growth and directs attention to one of the main reasons for this lag in economic activity, namely, the relatively slow rate of new capital investment in the Atlantic Provinces".⁽¹⁾

The Maritimes Transportation Commission is firmly convinced that transportation has been an important factor in the failure of the Atlantic economy to grow at a rate commensurate with other regions of Canada and with the nation as a whole.

In this respect it is interesting to note the view of the Province of Quebec:

"Transportation policies are an integral part of overall economic policies directed towards the general and continuing economic development of the nation as a whole as well as of all its parts." (Transcript of Evidence, Volume 124, Page 20648)

And, again,

"The Canadian economy is like a chain whose total strength is affected greatly by the strength of its weakest link. Hence all provinces of Canada have a vital interest to see that all sectors of Canada participate in the economic development of the country, for the benefits permeate widely throughout the economy to the benefit of Canada as a whole and all its parts.

One of the fundamental requirements of Canadian prosperity and balanced economic development is the growth of industries and markets from the Atlantic to the Pacific. Accompanying this economic growth is the expansion of trade from the east to

(1) Royal Commission on Canada's Economic Prospects, Final Report, 1957, Page 404 - 406.

the west, and from the west to the east." (Transcript of Evidence, Volume 124, Page 20571)

The proposal which the Maritimes Transportation Commission has made for the addition of the "Rate Difference" subvention on traffic outbound from the region would, it is submitted, do much to enable existing industry to compete on more equal terms transportation-wise with those in the principal markets and at the same time create a more favourable climate for the establishment of new industry in the region.

This Commission reiterates its view that

"Just as in the past transportation has been used as an instrument of public policy in the case of the Maritimes, it should again be so used today as an integral part of any measures which must be taken to eliminate the general income differentials between the Atlantic Provinces and other parts of Canada. The Atlantic Provinces are firmly convinced that historical precedent and present need require the de-emphasis of distance as a factor in rate making on their traffic." (Transcript of Evidence, Vol. 83A, P.81)

- - - - -

The suggestion was made by Mr. Sinclair, Q.C., in his cross-examination of Mr. Dickson, (Transcript Vol. 85, pp. 14666 et seq.) that the effect of the proposal of the Maritimes Transportation Commission would be to repeal Section 3 (2) (b) of the Maritime Freight Rates Act.

It is submitted, with respect, that this is not correct as it is abundantly clear that the "Rate Difference" method of subvention proposed by this Commission would not, in any respect, involve the repeal of any provision of the statute.

As stated in Paragraph 191 of the Submission, (Transcript, Vol. 83, p. 14437), the "Rate Difference" method can and would be superimposed on the Maritime Freight Rates Act.

The proposal is for a new subvention over and above the present subvention under the Maritime Freight Rates Act and the subvention under that Act is not to be affected. Accordingly Section 3 (2) (b) would continue to operate and no amendment would be required.

This Commission is unable, in the circumstances, to understand the contentions of Mr. Sinclair which, in its Submission, are palpably incorrect.

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The submission of the Maritimes Transportation Commission called for the payment of the Rate Difference Subvention on traffic outbound from the Atlantic Provinces to all types of for-hire carriers.

Competition between the different forms of carriage is highly desirable and is of great importance to industries in the Atlantic Provinces. The additional subvention proposed will not interfere with the natural development of competition between different types of carriers and thus will not deprive the users of transportation the free choice of carriers, if the payment of the Rate Difference subvention is made to all for-hire carriers. This includes railway, highway and water carriers.

The submission of the Maritimes Transportation Commission suggested the establishment of a Subvention Authority within the Department of Transport to administer the proposed "Rate Difference" Subsidy. The Subvention Authority would be responsible for, (1) the registration of eligible carriers; and (2) the certification and payment of valid carrier's reimbursement claims.

The following eligibility criteria was set out in the submission and appears on page 99, volume 83A, Transcript of Evidence dated September 12, 1960.

- (1) The carrier is registered with the Subvention Authority.
- (2) The carrier is properly licenced or franchised for the service (where licencing is required).
- (3) The carrier files his rates with the Subvention Authority and makes them available to the public.
- (4) The carrier charges only the rates filed with the Subvention Authority.

To properly assess the administrative considerations, the number of carriers which would fall within the above categories must be considered. According to the evidence placed before the Royal Commission by the Canadian Trucking Association(1), there are 25 highway freight carriers licensed to travel westbound from the Atlantic Provinces into

(1) Transcript of Evidence, Volume No. 124, Pages 20439 - 20440.

the Province of Quebec plus an additional 39 highway operators residing in that part of Quebec lying east of Diamond Junction and carrying freight to points located west thereof, a total of 64.

It is not expected that the number of such carriers will grow substantially since the licensing requirements of the Provinces generally give due consideration to public need, traffic volume, and the effect on other transport service. Indeed, the trend evidenced in recent years in the Maritime trucking industry is consolidation of a number of small companies into larger ones. This may well mean that there will not be any substantial growth in the number of carriers involved but rather a growth in the number of units operated by those carriers.

At the present time there are only three water carriers providing a regular scheduled for-hire service between the Atlantic Provinces and Ontario or Quebec. These carriers are Clarke Steamship Company Limited, Newfoundland-Canada Steamship Ltd. and Newfoundland-Great Lakes Steamships Limited. All three operate between Newfoundland and Ontario or Quebec. By far the bulk of the traffic carried by these companies is eastbound traffic which would not be eligible to the benefits of the proposed subvention.

While the proposed Rate Difference Subvention might pose some problems of administration initially this should not obscure the very real benefits which would accrue to the Atlantic Provinces as a result of the adoption of this proposal.

NEWFOUNDLAND

The Brief of the Maritimes Transportation Commission advanced certain proposals for improving the transportation situation of Newfoundland. In addition very valid and important submissions were made to the Royal Commission on Transportation by the Newfoundland Government during its regional hearings in St. John's, Nfld.

The proposals made by the Maritimes Transportation Commission could be briefly summarized as follows:

(1) that the competitive rates to Newfoundland applicable during the season of open navigation on the St. Lawrence be extended to apply for the remaining four months of the year and that the railways be reimbursed by subsidy for any loss of revenue sustained by such an extension.

(2) that the portion of the rate applicable for the distance of the non-productive water haul (108 miles) between North Sydney and Port aux Basques be eliminated from non-competitive rail rates and that the same amount of reduction be applied to through rail-water non-competitive rates via Montreal, P.Q., Halifax, N.S. and Saint John, N.B. The carriers to be reimbursed by subvention for these reductions.

(3) that a container ship suitable for the carriage of containers, highway transport trailers, automobiles and passengers be provided for operation between an east coast mainland point, such as Halifax, N.S., and an east coast port of Newfoundland.

It is respectfully submitted that the provision of a container vessel is urgently required to give Newfoundland shippers and receivers the opportunity of utilizing highway transport for interprovincial movements and to take advantage of technological changes in the carriage of traffic.

In this respect it is interesting to note that the Canadian National Railways has recently purchased 38 van-size containers suitable for carriage on flat-cars. More are on order.

The provision of a vessel which would be capable of utilizing such recent technological changes in the carriage of freight is, in the opinion of the Maritimes Transportation Commission, of vital importance in improving the transportation situation of Newfoundland.

The Maritimes Transportation Commission wishes to re-emphasize the importance of the proposals which have been made to improve the transportation situation of Newfoundland and to assure the Island a transportation environment as nearly comparable as possible to that of the Canadian mainland.

PORTS

The Maritimes Transportation Commission wishes to stress again

- (1) the need of a national policy of ports utilization to assure that the Atlantic Ports of Halifax and Saint John will participate to the fullest extent in the export and import trade of Canada, and
- (2) the necessity of developing appropriate incentives to secure the maximum volume of Canada's export and import traffic for Canadian ports.

HORIZONTALS

The Maritimes Transportation Commission has no further views to express in respect of the horizontal rate increases other than those found on Page 72 to 76 of its submission. (Transcript of Evidence, Volume 83A, Page 138 - 145)

CANADIAN PACIFIC RAILWAY, EXHIBIT NO. 162

At page 17604, Volume 106 of the Transcript of Evidence the Canadian Pacific Railway filed Exhibit No. 162 entitled:

Carload Traffic Via Canadian Pacific Railway-Comparison of Revenue As Result of 17% Freight Increase-Taken From Waybills Reported For Board's 1st Study-December, 1958 To November, 1959, Inclusive - (Excluding Traffic At United States Related Rates).

This Exhibit consisted of an analysis of the Waybills of the Canadian Pacific Railway, and its subsidiaries the Dominion Atlantic Railway and the Quebec Central Railway, submitted to the Board of Transport Commissioners for the 1st Waybill Sample during the period December 1st, 1958 to November 30, 1959 inclusive. No similar data was filed by Canadian National Railways in respect of movements originating on its lines.

The Maritimes Transportation Commission requested the Canadian Pacific Railway to supply it with the following particulars of the revenue data used in Exhibit No. 162 for Lines 1, 2, 11, 12, 14 and 15:

- (1) The origin and destination of each carload
- (2) The commodity shipped in each carload
- (3) The tonnage shipped in each carload

- (4) The revenue for each carload at the rate in effect on the date of the movement.

Accordingly the C.P.R. forwarded the data requested for Lines 1, 2, 11, 12 and 15 on November 17, 1960 and for Line 14 on January 3, 1961.

The Maritimes Transportation Commission has analyzed the data to the extent possible in the time available and the findings of its analysis are outlined in some detail in Appendix A to this memorandum.

From Appendix A the following conclusions are drawn:

- (1) The C.P.R. figures are not truly representative of Atlantic Provinces traffic because of the small part of the region served by the C.P.R. and D.A.R.
- (2) All rates used in the Exhibit are not correct.
- (3) The Exhibit includes under competitive rates the movement of for-hire semi-trailers from Fredericton and Aroostook where, prior to the rate increase, neither rates nor service was available.
- (4) The Exhibit includes certain export traffic moving at U.S. related rates which is subject to U.S. increases rather than Canadian increases.
- (5) The competitive rates within Ontario and Quebec include movements which were actually between Maritime points, between the Maritime points and Ontario and Quebec, between Ontario and Quebec and the West.
- (6) Competitive rates within Ontario and Quebec also include a number of commodity rated movements.

It is respectfully submitted, therefore, that the conclusions drawn from Appendix VI, VII, VIII of the Maritimes Transportation Commission brief have not been refuted by Exhibit No. 162, namely, that Atlantic Provinces traffic is less able to escape the impact of horizontal rate increases than traffic within Ontario and Quebec.

OTHER MATTERS

The Railways have submitted to the Royal Commission on Transportation a number of proposals which are of particular interest to the Atlantic Provinces.

APPEALS TO THE GOVERNOR-GENERAL IN COUNCIL

Section 53 (1) of the Railway Act provides:

"53. (1) The Governor in Council may at any time, in his discretion, either upon petition of any party, person or company interested, or of his own motion, and without any petition or application, vary or rescind any order, decision, rule or regulation of the Board, whether such order or decision is made inter partes or otherwise, and whether such regulation is general or limited in its scope and application; and any order that the Governor in Council may make with respect thereto is binding upon the Board and upon all parties."

Canadian National Railways, in its Submission at pp. 61-62 (Transcript, Vol. 111, pp. 18477-18478), recommends that the section be amended so that the Governor in Council will have no power to vary or rescind an order, decision or regulation of the Board which has been the matter of a judgment of the Supreme Court of Canada, following an appeal to that Court taken under Section 53 (2).

It will be observed from the Report of the Royal Commission on Transportation, 1951, at pp. 76 et seq. that the Canadian Pacific Railway Company urged that Commission to recommend the repeal of Section 52 (1) which was to the same effect as the present Section 53 (1). The Commission, after dealing with the submissions made by the Railway Company and the Provinces respectively, and referring to the experience under the Act and discussing the principles on which the Governor in Council had acted in disposing of appeals, concluded that it should not recommend that Section 52 (1) be repealed or amended.

Among the reasons were (1) the history of the legislation and the provisions of the Act indicated that the Government was to keep in touch with matters relating to railways; (2) relations between Parliament and the Government on the one hand and the Railway Companies on the other had been such that government supervision over railways cannot be

altogether abolished and (3) Canadian railways have been projected and built as manifestations of public policy, usually with financial assistance recommended by the Government, agreed to by Parliament and paid for by the people of the country.

As was stated by the Right Honourable Arthur Meighen, then Minister of the Interior and later Prime Minister:

"In connection with the administration of the work, of the Railway Commission, the Governor-in-Council, has followed, about, this rule--they would not interfere with a Judgment of the Commission, unless it appeared that certain elemental and relevant facts had not been taken into consideration. --It is a sort of a balance wheel, that may be called into play, where it appears to be absolutely essential in the public interest."

-House of Commons Debates 1919, p. 4563.

It is suggested that the arguments of the Provinces before the Turgeon Royal Commission against repeal or amendment remain as valid as they were at that time, as (1) the Railways are still instruments of national policy and the Federal Government should be able to review decisions which affect the economy of the country, (2) the Governor in Council has not unduly interfered with the Board's decisions and (3) the principles enunciated by the Governor in Council have been judicial in character.

It is respectfully submitted that it would be inadvisable, in the circumstances, to amend the provisions of Section 53 (1) as suggested,

Although the Canadian Pacific Railway Company did not, in its written Submissions or in any evidence adduced by it, specifically refer to the appeal to the Governor in Council, it would appear that it still takes the same position as it did before the Turgeon Royal Commission, namely that the power of the Governor in Council, in all respects, should be abrogated by legislative amendment. (Transcript, Vol. 125, pp. 20749 - 20750).

For the reasons assigned by the Turgeon Commission, for its refusal to adopt the suggestion of Canadian Pacific in this regard and those hereinbefore set out, such a suggestion should not be entertained in our respectful submission.

ABANDONMENT OF LINES

Canadian National Railways, in its Submission, pp. 45-52, 62-63 (Transcript Vol. 111, pp. 18458-18470; 18478-18480) and the Canadian Pacific Railway Company, in its Submission, pp. 55-60 (Transcript, Vol. 109, pp. 18236-18250) suggest that Section 168 of the Railway Act be amended. The Canadian National Railway Company's suggested amendment is found at p. 63 of its Submission and it provides for the abandonment of any line of railway whenever the revenues from such operation fail to meet the cost of operation, but that the Board may, with the approval of the Governor in Council, restrict or forbid the exercise of the right of abandonment whenever, in its opinion, the maintenance of the line is required in the public interest. The amount of any loss to the railway company arising out of any order is to be paid to the company annually out of the Consolidated Revenue Fund.

The suggestion of the Canadian Pacific Railway Company is quite different. What is proposed is that a railway company may abandon the operation of a line where it appears that the cost of operation and the cost of movement of traffic, originating or terminating on the line during a period of three consecutive calendar years, shall have exceeded the revenues attributable to that traffic. Notice of intention is given in the manner therein stated and during the period of two months immediately following the day on which notice was given to the Board, any person who has used the line immediately before that day, may apply to the Board to stay the abandonment of the line. The Board may grant the stay if it is satisfied that the cost of operation of the line and the cost of the movement of traffic during the three-year period did not exceed the revenues attributable to that traffic or that sources of revenue for a reasonable period in the immediate future sufficient to exceed these costs during the same period have been guaranteed, and if it is not so satisfied, shall dismiss the application for a stay.

The present Section 168 merely provides that the company may abandon the operation of any line of railway with the approval of the

Board, and no company shall abandon the operation of any line of railway without such approval.

Prior to the introduction of the predecessor of this section in 1933, a railway company was at liberty to discontinue service and abandon the whole or any portion of its line at any time, unless by its Special Act or by agreement, there was an obligation upon the company to maintain its line. (Coyne on The Railway Law of Canada, 1947, page 188).

Under the judgments of the Board, the issue is whether the loss and inconvenience to the public, consequent upon the abandonment, outweigh the burden that continued operation of the railway line involved would impose upon the railway.

It is respectfully submitted that the burden of proving that the abandonment will cause undue inconvenience to the public should not be on the users of the line, nor should there be a statutory obligation on such users to show sources of revenue sufficient to make the line profitable, as is contended by the Canadian Pacific Railway at p. 59 of its Submission.

There should, it is submitted, be no statutory onus upon either the railway company or the users, but the Board should be free, as it is now, to decide the questions involved upon the weight of evidence.

It is also apparent that the three-year period mentioned in the proposal of the Canadian Pacific Railway Company is too short a period and that the confining of an application for a stay to a person who has used the line during a period of one year immediately before the notice of abandonment is given, is equally restrictive.

The condition that the Board must be satisfied, before granting a stay, that sources of revenue for a reasonable period in the immediate future, sufficient to exceed the cost of operation of the line and movement of traffic, have been guaranteed, is most indefinite and impracticable.

These latter considerations are merely mentioned to indicate the obvious defects in the mechanics of the proposed change and are not intended to weaken our contention that the proposal is one which should not be entertained.

The proposal of the Canadian National Railways is a more reasonable one as it recognizes that the maintenance of the line may, in certain cases, be required in the public interest.

DISCONTINUANCE OF PASSENGER SERVICE

Canadian National Railways, in its Submission at pp. 22-24 and 67, (Transcript, Vol. 111, pp. 18428-18431 and 18485-6) sets out its Passenger Policy and recommends that the Railway Act be amended in the manner indicated for the reasons set out in the Submission.

The Canadian Pacific Railway Company, in Chapter 111, pp. 61-83, (Transcript, Vol. 109, pp. 18251-18269) discusses the Passenger Train Service and proposes the addition of sections to the Railway Act with respect to the discontinuance of such service.

The statutory amendment proposed by Canadian National Railways would permit a railway company to discontinue the operation of Passenger Train Service whenever the revenue from such service failed to meet the cost of operation. The company would be required to give to the Board ninety days' notice of its decision to discontinue the service and the Board might, with the approval of the Governor in Council, by order restrict or forbid the exercise of the right of discontinuance whenever, in its opinion, the maintenance of the service was required in the public interest. The amount of any loss to the company arising out of an order of the Board would, upon verification and certification of the Board, be paid to the company annually out of the Consolidated Revenue Fund.

The new section proposed by the Canadian Pacific Railway Company is quite similar to its proposal in respect of its abandonment of lines, to which reference has already been made.

If it appears that the cost of providing passenger service on any line of railway during the period of one calendar month has exceeded

the revenues received therefrom for that period, the company may discontinue the service, if no application for a stay is made by a person who has used the passenger service during the one-year period immediately preceeding the day on which notice is given or if the application for a stay has been withdrawn or dismissed by the Board. The application for the stay must be made during the two-month period following the day on which notice was given to the Board. The Board may grant the stay if it is satisfied (a) that the cost of providing the passenger service during the one-year period did not exceed the revenue therefrom during that period or (b) that sources of revenue for a reasonable period in the immediate future, sufficient to exceed that cost, have been guaranteed, and if it is not so satisfied, shall dismiss the application for a stay.

It will be observed that under the proposal of Canadian Pacific, the Board would not have jurisdiction to restrict or forbid the exercise of the right of discontinuance whenever, in its opinion, the maintenance of the service was required in the public interest, as it would under the proposal of Canadian National Railways.

It is respectfully submitted that the proposal of the Canadian National Railways is a more reasonable one in the circumstances and is to be preferred to the proposal of Canadian Pacific, which disregards entirely any consideration by the Board of public interest.

QUANTITY RATES

Canadian National has suggested that Section 317 (3) of the Railway Act and Section 32 (6) of the Transport Act be amended to allow the railways to quote quantity rates for both tariff movements and for agreed charges.

The Maritimes Transportation Commission is opposed to the amendments to the Railway Act and the Transport Act as proposed by the Canadian National Railways on the basis that such amendments would lead to discrimination between the large and small shipper.

The present Acts do not prevent the railways from taking into consideration the volume of traffic available when establishing rates

even though such rates must be quoted in cents per 100 lbs. or other unit and the carload rate for one car must not exceed the carload rate for any greater number of cars.

JOINT TARIFFS AND INTERCHANGE OF FREIGHT FOR RAIL-HIGHWAY MOVEMENT

The Canadian National Railways has suggested that Section 156 (1) and 341 of the Railway Act be amended to allow agreements to be made between rail and highway carriers for the establishment of continuous routes and arrangements by rail and road and to divide the earnings from such through movements between them.

This amendment proposed by Canadian National would appear to the Maritimes Transportation Commission to be of advantage to railway, trucker and shipper. It should be pointed out, however, that, if such an amendment were made, the legislation should provide that the burden of proof lies on the companies to show to the satisfaction of the regulatory authority that the joint rail-truck rate is not unjust or unreasonable and that it does not unjustly discriminate against or give an undue preference to any particular type of traffic, person or locality.

RATE MAKING FREEDOM

The Canadian National Railways has recommended that Section 328 (1) of the Railway Act be amended to give the railways freedom to set rates which must be compensatory and published for the information of all concerned, without any overriding power of disallowance being vested in the Board, except where a shipper can show that no practical means of transportation other than the railway is available to him.

Canadian National Railways in recommending this amendment state on Page 12 of their submission that it would not affect in any way the safeguards in the Railway Act which protect the public from unlawful discriminatory rate practices and that the Board would continue to exercise its jurisdiction to deal with cases of complaint of the justness and reasonableness of the rate.

The Maritimes Transportation Commission is opposed to the amendment suggested by the Canadian National Railways on the ground that,

while the amendment to Section 328 (1) would not limit the Board's power to investigate a tariff to determine its justness or reasonableness, it might render the Board powerless to require the railways to change or vary a rate which the Board had found unjust or unreasonable or in conflict with the Act in any respect whatsoever.

Insofar as the amendment to Section 334 suggested by the Canadian National Railways is concerned, the Maritimes Transportation Commission is of the opinion that if the Board of Transport Commissioners is to satisfy itself under Section 334 (2) that:

(a) the competition exists

(b) the rates are compensatory

(c) the rates are not lower than necessary to meet the competition the requirements set out in (i) to (viii) of Section 334 (2) must be known insofar as ascertainable.

In other words, the requirements of (i) to (viii) in Section 334 (2) would not appear to be unduly onerous on the railways at the present time. While the Maritimes Transportation Commission does not see the need for the removal of these eight requirements, it would not object to their removal so long as the amendment does not limit in any way the Board's power to investigate a competitive rate tariff to establish that (a) the competition exists, (b) the rates are compensatory, and that (c) the rates are not lower than necessary to meet the competition.

THE NEED FOR A GENERAL REVISION OF RAILWAY LEGISLATION

The Canadian National Railways suggested that a thorough review and revision of railway legislation be undertaken by some competent authority to be named by the Federal Government. Canadian National Railways further submitted that the guiding principle in such a review should be that restrictions be the exception rather than the rule, and in particular they should not apply to competitive rates except in very extraordinary circumstances.

The Maritimes Transportation Commission is of the opinion that certain requirements concerning public safety and physical operating

regulations of the Railway Act are out-dated because of technological change and it would not oppose the proposal of the Canadian National for a review and revision of railway legislation in that respect.

Many proposals have been made to the Royal Commission on Transportation suggesting revisions of one type or another in the legislation respecting Railway rate regulations and the Maritimes Transportation Commission can see no need for a further review of this legislation.

C.N. - C.P. ACT

The railways have made certain proposals concerning this Act. The Maritimes Transportation Commission is of the opinion that this Act could be used by the railways to achieve further economies and recommends, therefore, that any changes in the Act should be designed to make it more effective.

ANALYSIS OF CANADIAN PACIFIC RAILWAY EXHIBIT NO. 162

While time has not permitted the Maritimes Transportation Commission to analyse completely the basic data underlying Exhibit No. 162 certain observations can be made.

Exhibit No. 162 is a 1% sample of revenue carload shipments handled by the Canadian Pacific Railway, the Dominion Atlantic Railway and the Quebec Central Railway.

In the Atlantic Provinces the Canadian Pacific Railway serves a small section of Southwestern New Brunswick and the Dominion Atlantic Railway serves the Annapolis Valley of Nova Scotia. The total main line track of these two companies is 846 miles. The total main line track mileage of all railways in the Atlantic Provinces, excluding the Quebec North Shore & Labrador Railway Company, is 4164 miles. Thus the Canadian Pacific and Dominion Atlantic Railways mileage is only about 20% of the total main line track mileage in the Atlantic Provinces.

In Exhibit No. 162 the total revenue received by the C.P.R. in the period December 1, 1958 to November 30, 1959 at rates in effect at time of movement from Atlantic Provinces traffic is shown as \$59,222.25 (total of first column of figures for lines 31, 32 and 33). It should be noted here that the \$59,222 includes the subvention the railways received from the Federal Government under the Freight Rates Reduction Act, the Maritime Freight Rates Act and the Bridge Subsidy legislation.

The Waybill Analysis of the Board of Transport Commissioners for the Calendar year 1959, on the other hand, shows that the railways participating in the Waybill Analysis received \$468,109 of revenue from Maritime originating traffic, exclusive of subventions received by such railways under the Freight Rates Reduction Act and the Maritime Freight Rates Act. The Maritime revenue of \$59,222 contained in the C.P.R. Exhibit is 12.7% of the Maritime revenue recorded in 1959 Waybill Analysis. If the Maritime revenue recorded in the 1959 Waybill Analysis included subventions received by the railway under the Freight Rates Reduction Act

and the Maritime Freight Rates Act the percentage relationship would be less than 12.7%.

Even though the two revenue figures were earned in slightly different periods and one figure contains certain subventions not included in the other, it is submitted a comparison of the two figures does give a rough indication of the part the Canadian Pacific Railway revenue plays in the total Atlantic Provinces traffic revenue.

From the above, it can be seen that the Canadian Pacific Railway accounts for only 20% of the main line track in the Atlantic Provinces and only a small part of the revenue obtained from Atlantic Provinces traffic. It is not unreasonable to state, therefore, that Canadian Pacific Railway figures alone are not indicative of Atlantic Provinces traffic generally.

At Page 17899, Volume 107 Transcript of Evidence, the Canadian Pacific Witness explained that the reason "Traffic at Normal Rates" in Exhibit No. 162 did not show a 17% increase was that such traffic included Coal movements on which a flat increase was applied.

From this it follows then that the reason Atlantic Provinces traffic moving at "normal rates" does not show a 17% increase is because of the influence of Coal movements in the Waybill sample used for Exhibit No. 162.

The following observations are made concerning the data underlying the percentage increases shown for competitive rated traffic in Exhibit No. 162.

1. Revenue figures in Exhibit No. 162 for competitive rated traffic moving within the Maritimes (Line 11) are based on fifty-two carloads of traffic. The 1959 1% Waybill Analysis records the movement of 483 carloads of competitive rated traffic within the Maritimes in the calendar year 1959. Since the fifty-two carloads represent only about 10% of the total competitive rated carloads recorded in the 1% waybill Analysis, it is reasonable to assume that the fifty-two carloads

are not necessarily representative of all competitive rated traffic moving within the Maritimes.

Again, it should be pointed out that the fifty-two carloads are traffic handled by the C.P.R. and D.A.R. only. The C.P.R. serves Saint John, N.B. where a major oil company is located. The D.A.R. serves the Annapolis Valley between Halifax, N.S. and Yarmouth, N.S. Here again the railway is in close proximity to a major oil company located at Imperoyal, N.S. and several bulk petroleum distributing plants at Halifax, N.S. and Dartmouth, N.S. It is not unreasonable to expect that the C.P.R. 1% sample would pick-up a number of petroleum products movements from Saint John, N.B. and the Halifax area of Nova Scotia.

An analysis of the actual figures reveals this to be true. Of the fifty-two carloads recorded on Line 11 of Exhibit No. 162, thirty-three carloads were petroleum products. In a number of cases, such cars would have been subject to an increase of less than 17%. It is interesting to note in this connection that where Petroleum Products have been able to escape the impact of the 17% increase it has been, to a large extent, because of private carriage.

As Part A of Appendix VI, VII and VIII of the Maritimes Transportation Commission submission pointed out, very few competitive rates within the Maritimes, other than Petroleum Products, were exempt in part or in full from the 17% increase.

It is submitted, therefore, that the rate of increase shown for Line 11 of Exhibit 162 is not representative of all competitive rated traffic moving within the Maritimes because of the preponderance of Petroleum traffic in the C.P.R.'s 1% sample.

2. Revenue figures in Exhibit No. 162 for competitive rated traffic moving from the Maritimes to Ontario and Quebec (Line 12) are based on thirty carloads of traffic.

APPENDIX A

P. 4

These thirty carloads consisted of the following:

- 3 carloads of Merchandise, Saint John to Montreal
- 1 carload of Beer, Halifax to Montreal
- 18 loaded "for-hire" semi-trailers, Saint John to Montreal
- 3 empty "for-hire" semi-trailers, Saint John to Montreal
- 4 loaded "for-hire" semi-trailers, Fredericton to Montreal
- 1 empty "for-hire" semi-trailer, Aroostook to Montreal

30

The three carloads of merchandise are recorded as having an average rate of approximately 170 cents per 100 lbs. for the combined weight of two of the cars and approximately 186 cents per 100 lbs. for the third car. The Maritimes Transportation Commission is unable to verify these rates on hand of the applicable tariffs and it cannot, therefore, determine whether or not the rates on these three cars were subject to the 17% increase.

The one carload of Beer from Halifax, N.S. to Montreal, P.Q. is recorded in the data supplied to the Maritimes Transportation Commission by the C.P.R. as taking a rate of 39½ cents per 100 lbs. The only rates published in the period November 30, 1958 to November 30, 1959, inclusive, on Beer from Halifax, N.S. to Montreal, P.Q. are as follows:

| Date | Rates in cents per 100 lbs. | | | |
|-------------------------------|-----------------------------|-----|------------|-----|
| | Billed | | Normal (1) | |
| | (s) | (w) | (s) | (w) |
| 1. January 1, 1958 | -- | 49 | -- | 59 |
| 2. November 30, 1958 | 41 | -- | 48 | -- |
| 3. December 1, 1958 | 48 | -- | 56 | -- |
| 4. January 1, 1959 | -- | 57 | -- | 69 |
| 5. September 24, 1959 | 48 | -- | 51 | -- |
| 6. % Increase - Line 5 over 2 | 17½ | -- | 10.6½ | -- |
| Line 4 over 3 | -- | 17½ | -- | 17½ |

(s) Summer rate, effective April 1st to December 31st each year

(w) Winter rate, effective January 1st to March 31st each year

(1) Normal Rate includes deduction for water movement between Digby Wharf and Saint John in effect on date shown

Source: "Billed" Rates: D.A.R. Tariff No. 126-F, C.T.C. No. 1226, Item No. 30
 "Normal" Rates: B.T.C. Orders No. 96157, 96932, 99265

From the above it will be seen that the rates paid by the shipper during the 12 months following the granting of the 17% rate increase were 17% higher than prior to December 1, 1958. The reason the normal rates did not take the 17% increase would appear to be caused by the Board of Transport Commissioners certification of the normal tolls. In any event, it was not competition that held the normal tolls down because the rate paid by the shipper was subject to the full 17% increase.

The eighteen loaded "for-hire" semi-trailers from Saint John, N.B. to Montreal, P.Q. were carried at rates provided in Canadian Freight Association Tariff No. 38 - series and were subject to the full 17% increase.

The three empty "for-hire" semi-trailers from Saint John, N.B. to Montreal, P.Q. also moved at rates in Canadian Freight Association Tariff No. 38 - series. On February 9, 1959 all rates on empty "for-hire" semi-trailers within Canada were exempted from the 17% increase.

The four loaded "for-hire" semi-trailers from Fredericton, N.B. to Montreal, P.Q. moved at a rate of 181 cents per 100 lbs. This rate, found in C.F.A. Tariff No. 38 - series, was only established on February 2, 1959 and, incidentally, it is identical with the rate from Saint John, N.B. which was established prior to the rate increase and which was subject to the 17% increase. There is only a difference of 22 miles in the C.P.R. distance from Fredericton to Montreal as compared to the distance from Saint John to Montreal. It would not be unreasonable to assume that the same rate would be established from both points and, if so, the Fredericton rate reflects the 17% increase.

The Maritimes Transportation Commission is unable to determine what rate the C.P.R. used to calculate the revenue which it would have obtained at rates in effect November 30, 1958. On November 30, 1958 the C.P.R. did not provide a piggyback service or rates for the movement of "for-hire" semi-trailers from Fredericton, N.B. to Montreal, P.Q. The movement of these four trailers is then "new traffic" for the C.P.R. and they do not in any way "test the actual effect of a horizontal percentage

increase in freight rates on traffic moving to and from the various regions of Canada....."(1)

The one empty semi-trailer from Aroostook, N.B. to Montreal, P.Q. moved at a rate of 49 cents per 100 lbs. This rate was first established on June 1, 1959 in the Canadian Freight Association Tariff 38 - series.

Here again this is "new traffic" since the C.P.R. did not provide a piggyback service or rates for the movement of "for-hire" semi-trailers between Aroostook, N.B. and Montreal, P.Q. on November 30, 1958.

From the foregoing it will be seen that the 17% increase was applied to all competitive rated traffic in Exhibit No. 162 moving from the Maritimes to Ontario and Quebec, which moved at rates in existence on November 30, 1958, with the exception of the three empty semi-trailers from Saint John to Montreal and possibly the three carloads of Merchandise from Saint John to Montreal.

3. Time has not permitted a complete analysis of the 1397 carloads of competitive rated traffic within Ontario and Quebec which make up Line 14 of Exhibit No. 162.

It should be noted, however, that 18 movements are included in this line which are not movements within Ont. and Que. and should not be included in Line 14. These movements consist of 5 movements within the Maritimes, 5 movements from the Maritimes to Ontario and Quebec, 6 movements from Ontario and Quebec to the Maritimes and 2 movements from Ontario and Quebec to the West. In all fairness it is noted, however, that such movements are small in relation to the total movements within Ontario and Quebec.

It should be noted too that the data for Line 14 "Traffic at Competitive Rates" contains certain commodity rated movements, for example, Quartz from Lawson Quarry, Ont. to Clara Belle, Ont.; Barley from Quebec,

(1) Transcript of Evidence, Volume 106, Page 17626

P.Q. to St. Evariste, P.Q.; and Resins from Montreal, P.Q. to Toronto, Ont. As stated earlier, time has not permitted a detailed analysis of the data which was forwarded by the C.P.R. on January 3rd, 1961 but it may well be that there are other commodity rated movements in this data.

4. Revenue figures in Exhibit No. 162 for competitive rated traffic moving from Ontario and Quebec to the Maritimes (Line 15) are based on thirty-three carloads.

Exhibit No. 162 by its title indicates that traffic moving at U.S. related rates and, therefore, subject to U.S. rather than Canadian increases, is excluded. An analysis of the thirty-three carloads of traffic on which Line 15 of Exhibit No. 162 is based indicates, however, that at least eleven carloads consisted of export traffic moving from Ontario and Quebec to Saint John at rates related to rates via U.S. North Atlantic Ports and subject to U.S. increases.

Three carloads appear to have moved at rates published in Canadian Freight Association Tariff 30 - series. This tariff "was established to provide a one factor through rate from points in Canada to the United Kingdom and Continental destinations with the idea of competing with the all-water transportation which was becoming more apparent from Great Lakes ports with each passing year(1).

It would appear, therefore, that this tariff is not based so much on motor truck or water competition from shipping point to seaboard but rather it is based on direct water competition from the Great Lakes ports to the United Kingdom and other overseas ports.

One carload, or 15,000 lbs., of Copper Tubing moved at a competitive rate which was not subject to the 17% increase.

Four carloads of Automobiles and Trucks moved at competitive rates which were subject to the full 17% increase.

(1) C.W. West, Foreign Freight Agent, C.P.R., Board of Transport Commissioners, In The Matter of Increased Export & Import Rates, Transcript of Evidence, Vol. 1060, Page 2351, April 9 and 10, 1958.

Seven carloads consisted of loaded "for-hire" semi-trailers and moved at rates subject to the 17% rate increase.

One export carload moved at a motor truck or water competitive rate which was subject to the full 17% rate increase.

Line 15 also includes one carload of Ammunition from Staynerville, P.Q. to Yarmouth, N.S. which apparently moved at a Class 55 rate which took the full 17% increase. This car should not, of course, be included in figures for competitive rated traffic.

One carload, or 26,000 lbs., of Merchandise moved from Montreal, P.Q. to Saint John, N.B. at a motor truck competitive rate which was established on October 19, 1959. The Maritimes Transportation Commission is unable to determine what rates were used by the C.P.R. to calculate the revenue at rates in effect November 30, 1959.

Line 15 also includes one carload, or 12,000 lbs. of Alcohol from Montreal, P.Q. to Saint John, N.B. which moved at a rate of approximately 56 cents per 100 lbs. The Maritimes Transportation Commission is unable to verify this rate on hand of the applicable tariffs. It is also interesting to note that neither the 1958 or 1959 Waybill Analyses record such a movement. The Maritimes Transportation Commission is not unmindful that this 12,000 lbs. movement might have been a part carload. If it were, however, the other part of the carload should also show in the data supplied to this Commission by the C.P.R. and it does not.

The Maritimes Transportation Commission has been unable to verify from the applicable tariffs the rates on the remaining three carloads, containing Feed, Gas and Oxide.

From the foregoing it is evident that it is the inclusion of traffic moving at U.S. related rates and subject to U.S. increases which holds down the rate of increase on Line 15 of Exhibit No. 162. It follows then that, without the U.S. related traffic which is presently included in Line 15 of Exhibit No. 162, the rate of increase would be much greater than that shown.

DEPARTMENT OF ECONOMICS
Queen's Park - Toronto 2 - Ontario

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Office of the
Deputy Minister

February 9, 1961.

Mr. F.W. Anderson,
Secretary and Director of Research,
Royal Commission on Transportation,
Daly Building,
P.O. Box 1173,
Ottawa, Canada.

Dear Mr. Anderson:

Would you please advise the Chairman and other members of the Royal Commission on Transportation that the Province of Ontario has nothing further to add that was not included in its brief but would like to again emphasize some of the basic principles that were set out in it. We deem this to be necessary in view of representations that have been made since the Province's submission for greatly increased subsidies on railway shipments and for the extension of subsidies to include all for-hire carriers engaged in the transportation of freight to central Canada.

As was pointed out in the Ontario submission last March, Ontario has a vital stake in the operation of the railways and in the rates and other means by which they are financed. Thus, the establishment of railway rate subsidies in other provinces or the adoption of other means that would result in the restriction of this Province's production and trade and increase its costs could not be viewed with equanimity.

When considering payments to subsidize freight rates it must be kept in mind that many industries in other provinces enjoy the benefit of generally lower wage rates, lower priced industrial lands and locations that are more favourable with respect to export markets overseas than the industries in central Canada. The Province's position is that sound railway operations are only possible if railway rates are related to the cost of providing service. As was said in the Ontario submission "subsidies may be employed in special cases but they are not appropriate instruments because they will tend to heighten resistance to rather than facilitate necessary changes."

Referring particularly to northwestern Ontario, the Ontario submission noted the temptation of the railways to increase rates where the statutory limits do not apply and where competition is less keen. There is some evidence that this situation has worked against the best interests and the growth and development of northern and northwestern Ontario and some other parts of the Province.

There may be instances where below-cost rates may be applied in the short run to achieve a scale of development and operation which will pay its way over the long pull. Such cases must be examined and decided on their merits. As a general principle, however, the Province

Mr. F.W. Anderson,
Secretary and Director of Research,
Royal Commission on Transportation.

February 9, 1961.

of Ontario maintains that sound railway operations will only be possible if railway rates are related to the cost of providing the service. Any departures from this principle should be carefully examined in the light of the burden that may be imposed on other industries and the effect on the general productivity of the national economy as a whole. The foregoing also provides our answer to the question which was raised by Commissioners Mann on page 7262 of the transcript. We also take pleasure in attaching a statement in response to a request to recalculate Table 4 on page 18 of the Brief, transcript page 7133, on the basis of a special way-bill analysis by the Board of Transport.

Would you please convey our best wishes and kindest regards to your Chairman, Mr. MacPherson, and all the other members of the Committee.

Yours very sincerely,

(SGD) George Gathercole.

Enclosure
GG:h

REVISED TABLE 4

Estimated Revenue per Car-mile from all Carload
Traffic Originated in Ontario in 1958 as Deduced from the
Waybill Analysis

| Commodity Group | Total Carload Traffic Originated in Ontario | | Average Revenue Per Car Mile ¢ | Products of Columns II and III |
|--------------------|--|----------|---|--------------------------------------|
| | Cars | per cent | | |
| Agricultural | 725 | 10.513 | 50.557 | 531.51 |
| Animal | 72 | 1.044 | 52.575 | 54.89 |
| Mines | 2,438 | 35.354 | 96.440 | 3,409.54 |
| Forest | 442 | 6.410 | 66.532 | 426.47 |
| Merchandise | 3,219 | 46.679 | 65.282 | 3,047.30 |
| | 6,896 | 100.000 | | 7,469.71 |

Columns I and III above are drawn from Board of Transport Commissioners, Waybill Analysis, 1958: by Province and Commodity.

The computation shows a weighted average revenue per car-mile of 74.7 cents.

Had the computation been made on straight carloads only (excluding mixed and part carloads and transit shipments), the figure would have been 78.1 cents.

This table shows estimated average earnings per car-mile of 74-78 cents depending on whether one uses all carload traffic or straight carloads only. It is, of course, much superior as an indication of the average earnings for car-mile on traffic originated in Ontario to the Table 4 originally submitted.

The new table is based on the sample traffic as shown in the Waybill Analysis both as to relative volumes and as to earnings per car-mile. The table which it supplants was based on the percentages of traffic loaded at stations in Ontario as shown in D.B.S., Railway Freight Traffic, 1958, and on the average revenue per car-mile for each commodity group in all Canada as shown in Waybill Analysis, 1958 which was the best available information until the new provincial cross-classification of the data for the Waybill Analysis became available.

FINAL SUMMATION

AND

ARGUMENT

OF THE

PROVINCE OF SASKATCHEWAN

TO THE

ROYAL COMMISSION ON
TRANSPORTATION
1961



GOVERNMENT OF THE PROVINCE OF SASKATCHEWAN

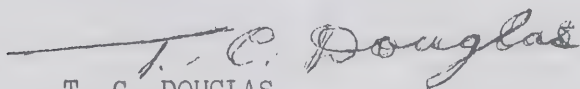
REGINA, February 7, 1961.

M. A. MacPherson, Esq., Q.C.,
Chairman,
Royal Commission on Transportation,
OTTAWA, Ontario.

Dear Sir:

I have the honour to present herewith
the Final Summation and Argument of the Province of
Saskatchewan.

Yours faithfully,



T. C. DOUGLAS,
Premier of Saskatchewan.

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FINAL SUMMATION AND ARGUMENT1. Introduction

The Government of the Province of Saskatchewan has taken particular care to direct its submissions to the terms of reference of the Commission. These terms outline in a general way the nature and scope of the inquiry which the Commission was instructed to conduct. It is clear, of course, that the circumstances leading to the appointment of the Commission offer significant clues concerning the relative importance of the many individual conditions and concerns which fall within the designated area of investigation. The Province has accordingly noted these circumstances and has kept them in mind in the preparation of materials for presentation to the Commission.

The Commission was appointed and its terms of reference were drafted in a situation in which the predominant incidents and developments were the following: (1) the Board of Transport Commissioners awarded a new horizontal increase of 17 per cent in freight rates (effective December 1, 1958) over the clear evidence and demonstration that the increased burden would fall in undue proportion on the Maritime and Western Provinces; (2) the Federal Cabinet dismissed appeals by the Provinces protesting the award on the grounds of clearly established inequity but simultaneously announced the appointment of a Cabinet committee to study the situation and to seek to discover ways of relieving the impact of the award on the Maritime and Western Provinces; (3) Parliament passed the Freight Rates Reduction Act providing a temporary subsidy of \$20 million payable to the railways to reduce the general level of freight rates pending a full investigation and with a suspension of further increases to permit the inquiry to proceed.

The Government of Saskatchewan considers it significant that the

Commission was appointed and its terms of reference drafted in a sequence of events pointing clearly to one central fact, the disproportionate and inequitable impact on the Maritime and Western Provinces of horizontal increases in freight rates which have followed one another in seemingly endless succession. The central objective established for the Commission in its terms of reference is the furtherance of national economic policy and the national interest. With this overriding purpose in view, the Commission is enjoined to make a comprehensive and careful inquiry into the problems relating to railway transportation in Canada including, particularly, inequities in the freight rate structure, their incidence upon the various regions of Canada, and the changes which should be made to remove or alleviate such inequities.

The Government of Saskatchewan considers it self-evident that national economic policy is long standing and evolutionary in nature and that the requirements of the national interest change with changing economic circumstances. National economic policy must accordingly be regarded as variable and adaptable to changes in national needs. From this it follows that a comprehensive inquiry into the problems of railway transportation in Canada can not be satisfactorily conducted by consideration of current or recent developments only. Present problems relating to transportation have developed over the course of past decades in conjunction with the evolution of national economic policy and their bearing on the national interest can be properly assessed only by consideration of the circumstances from which they arose.

II. National Policies and Their Effects on the Saskatchewan Economy

Policies which may be clearly in the national interest and indeed indispensable to its furtherance may not yield equal benefits to the residents of all parts of the nation. Nor is there any certainty that the costs of essential policies will bear with equal weight on different regions. These facts do not necessarily indicate inequity. They do signify, however, that national policies must be examined as a group rather than piecemeal and in isolation. They also lead to the conclusion that the unequal incidence of individual policies ought to be compensated for by countervailing adjustments in other policies in order that national policy as a collective whole may foster a maximum of equity for all segments of the national economy.

Policies having to do with transportation facilities have been at the centre of national purposes from the earliest beginnings of the Canadian nation. Decisions concerning the nature and location of transportation facilities, the timing of their construction and the means whereby they would be financed have had a marked effect on the course of Canadian economic development and the position of the various regions within the Canadian economy.

Confederation and the drafting of the British North America Act was the first national policy in Canada, for the nation could not exist without a national constitution. The provision of railways clearly constituted the second such policy, for the vast and widely scattered territories which went to form the Dominion could achieve no unity or independent survival without the best bonds of communication that the railway age could supply. Railways to link the St. Lawrence region with the Atlantic and the Pacific economies and seaports were the first major economic requirement of the new Federal Government posing its first and one of its most onerous financial obligations. The nationalistic expansionism of the United States was so obvious by the 1860s and was so clearly directed northward toward the western British territories that the Pacific railway project assumed an urgency which defied Canadian convenience or

ready financial strength.

The railway to the Atlantic - the Intercolonial - was built entirely from the public treasury. The railway to the Pacific was built by a private company with substantial public assistance in the form of cash, completed line, grants of the choicest land, tax and duty concessions, and monopoly privileges. The Canadian Pacific Railway Company was from its inception an instrument for the furtherance of national economic policy, generously endowed by virtue of its national and perpetual responsibilities.

It must be noted that, while monetary aid (including completed line) and tax concessions were borne by Canadian taxpayers generally, the burden of land-grant assistance fell exclusively on the Prairie Provinces and particularly on the Province of Saskatchewan.

The four original provinces had been granted control over the natural resources within their respective boundaries by the British North America Act and the Red River settlers made it clear in demanding provincial status that they would be satisfied with nothing less. Their views and requests were rejected, however, and the Province of Manitoba was created inferior in economic and political status to the original provinces. The Manitoba Act of 1870 (Statutes of Canada, 33 Vic., c. 3, s. 30) provided that "All ungranted or waste lands in the Province shall be . . . vested in the Crown, and administered by the Government of Canada for the purposes of the Dominion" Justifying this section of the Act in debate Sir John A. Macdonald told the House that the residents of the Red River colony "wished Rupert's Land made into one Province, and to have all the land within the boundary as in other Provinces . . . [but] the land could not be handed over to them, as it was of the greatest importance to the Dominion to have possession of it, for the Pacific Railway must be built by means of the land through which it has to pass." (Italics added).

When the Provinces of Saskatchewan and Alberta were created in 1905 the Dominion Government extended what might be described as Manitoba status to them, retaining their crown lands for national purposes.

The Canadian Pacific Railway Company was, according to its contract, to select its lands from the uneven numbered sections in a railway belt twenty-four miles deep on either side of a railway line from Winnipeg to Jasper House. There was clearly no intention of imposing on any of the pre-Confederation provinces for lands to finance the construction of the Pacific railway: the public domain of the Federal Government (including the lands of Manitoba) would suffice.

With the Cordillera and the Precambrian Shield excluded from the railway belt by definition, the builders of the Canadian Pacific railway were assured of a choice of lands in the 'fertile belt', the most attractive portion of the Canadian West and indeed, perhaps, of the entire Dominion, for purposes of settlement. But with a concern for assuring excellence in the quality of railway lands which had no counterpart in American example the Canadian Government early introduced and consistently adhered to a fairly-fit-for-settlement proviso in its railway land-grant policies. This proviso was taken quite for granted in the negotiations with the Canadian Pacific Railway syndicate so that the contract excused the Company from accepting any lands in the railway belt 'not fairly fit for settlement' and made provision for indemnity selection elsewhere.

The 'main line' mileage of the Canadian Pacific Railway was located provincially in the following approximate amounts: 652 miles in Ontario; 208 miles in Manitoba; 419 miles in Saskatchewan; 336 miles in Alberta; and 268 miles in British Columbia. The land grants thus 'earned', however, were selected: 2,183,084 acres in Manitoba; 6,216,784 acres in the present boundaries of Saskatchewan; and 9,805,446 acres within the present boundaries of Alberta.

Between 1881 and the termination of the railway land-grant system in 1894 the Dominion Government granted lands to a number of 'colonization railways' in Manitoba and the North-West Territories, the grants embodying the fairly-fit-for-settlement proviso and its counterpart, indemnity selection. In total, including Canadian Pacific, 3630 miles of Canadian railway lines were subsidized by grants totalling nearly 32 million acres of western

lands. Saskatchewan contains less than nine hundred miles or one-quarter of the total mileage but provided over 15 million acres of land or nearly one-half of the total land-grant subsidy.

The Government of Saskatchewan submits that the burden of providing the railway system which was and continues to be absolutely essential for Canadian national unity and economic development has fallen with glaring disproportion on the Prairie Provinces and, in particular, upon the Province of Saskatchewan.

The return of natural resources to the Prairie Provinces in 1930 involved complex and protracted negotiations to determine the compensation due the Provinces from the Dominion Government. The claims of Saskatchewan and Alberta for compensation for lands alienated before provincial organization in 1905 were rejected by the Supreme Court of Canada and the Judicial Committee of the Privy Council. The great bulk of all railway land grants had been selected before 1905. More than 98 per cent of the land secured by the Canadian Pacific Railway Company in what is now Saskatchewan territory had been selected before the Province was formed. The alienation of such lands by the Dominion Government in the national interest before September 1, 1905 formed no part of the calculation of compensation due to the Province for natural resources.

It has been said that Canada is a nation in spite of geography. The difficulty and costliness of integrating the vast transcontinental area that constitutes the Dominion bear witness to the validity of this view. The deliberate and persistent purpose embodied in national policies has been the distortion of normal channels of Canadian-American trade. This distortion has been necessary in the national interest and is not questioned here. It is essential, however, to keep in mind the resultant burden upon the Canadian economy and upon particular segments of that economy. It is the contention of Saskatchewan that the burden can be traced in terms of artificially located railway mileage and in the prevention of Canadian access to the most favourable of industrial markets.

The burdens of the Canadian transportation structure, which have

been enhanced by national policies, are not apportioned equally among Canadian geographic regions. The intensiveness of water and truck competition accounts for lower rail rates in the Central Provinces and the competition of ocean carriers effectively controls those to the Pacific coast. In the interest of maintaining railway earnings, the rates to and in the Prairie Provinces are kept unduly high and are not restrained by any adequate measure of truck or water competition.

Railway policies of the Dominion Government have been inseparably associated with the policy and practice of commercial protection. Canadian rail lines between Central Canada, on the one hand, and the Maritimes and the West, on the other, did not in themselves make it certain that manufacturing facilities should develop in Central Canada to supply the outlying regions. Without protective measures of some sort, Canadian manufacturers would secure and hold the markets of the outlying regions only if they could deliver goods in competition with the highly efficient mass-production industries of eastern and middle-western United States. This they alleged they could not do. Whether they could have done so or not has never been put to the test. A policy of tariff protection was instituted in Canada before there were any significant outlying markets to supply, and, indeed, before there was any great body of industry to supply them.

Although the National Policy of tariff protection was introduced by the Conservatives and attacked vigorously by the Liberals while in Opposition, no party while in power in the Federal Parliament has seen fit to modify significantly the Canadian protective system.

Saskatchewan submits that industrial protectionism is a striking example of a policy regarded as essential in the national interest which distributes its costs and benefits in regional disproportion. Duties on imports into Canada have curtailed a wide range of manufactured imports and have replaced them with higher priced Canadian products. To the extent that this has happened - that is, to the extent that the national policy of protection has been successful - Canadian industry has expanded to a greater extent than it otherwise would have. At the same time, Canadian

costs of production and of living have been enhanced. Since the greatest industrial opportunities are geographically concentrated in the Central Provinces, the expansion of industrial activity attributable to tariff protection has taken place in the Central Provinces. The Prairie Provinces have had few industrial possibilities but great capacity for export production. The tariff, then, has provided no scope for western industrial expansion and has had the unmitigated effect of curtailing the expansion of export activity because of the pronounced increase in costs of production and of living to which it gives rise.

It is Saskatchewan's contention, then, that Canadian tariffs have denied to the residents of the Prairie Provinces the advantages of buying in the low-cost, mass-production industrial areas of the United States and, also, that tariffs have forced them to buy the more expensive Canadian manufactured goods and to pay the freight on what is in many cases a longer haul over Canadian railway lines from Canadian sources of supply. As producers, the people of the wheat economy have higher and more rigid costs of production as a result of tariffs. As consumers they similarly have higher and more rigid costs of living.

Canadian tariff policy has pursued the dual national purposes of fostering Canadian industry and of creating traffic for Canadian railways. It is clear to the Government of Saskatchewan that as far as these purposes have been achieved the residents of the prairie economy have borne a double portion of the costs involved. First, they have been denied access to many of the efficient mass-producing centres of American production for the purchase of their requirements. Second, they have had to pay transportation charges on their purchases for the longer distances from Canadian production centres.

In broad summary the Province of Saskatchewan directs the attention of the Commission to the following essential facts. First, the concept of a national transportation policy is far from new in Canada and is, instead, at least as old as the Canadian nation. The national transportation policy has evolved step by step with the growth of the Canadian nation and has

demonstrated remarkable adaptability in the face of changing circumstances. Second, national transportation policy has never been isolated or peripheral with relation to other basic national policies; it has always been of key importance and has been closely interrelated continuously with other policies of comparable import. Third, neither costs nor benefits of individual policies concerning trade and economic development which have been judged essential in the national interest have impinged equally or equitably on the different sections of the Canadian economy.

The Province of Saskatchewan submits that it is imperative for the furtherance of the national interest that adaptations made in the national transportation policy take account, not only of changing circumstances of the present day, but also of the unequal regional burdens inherent in individual national policies. Saskatchewan strongly urges that every effort be made toward rendering these unequal burdens compensatory rather than cumulative with reference to particular regional communities. It is patently unfair and disruptive of national unity that Saskatchewan and the other Prairie Provinces, which bore the brunt of the land-grant gifts considered essential to the creation of the national railway system and which carry an undue proportion of the burden of the national policy of tariff protection, should also be called upon to shoulder the lion's share of the steadily mounting costs of the Canadian transportation industry.

The Province of Saskatchewan has noted with alarm and dismay in this inquiry the presentation of evidence which, although fragmentary, displays the adoption in different quarters of the view that Canadian railways are no longer instruments of national policy endowed with a continuing responsibility and concern for the public interest. In the minds of certain witnesses before this Commission the railways appear to have been reduced, through some mysterious and perverse alchemy, from their original and long-unquestioned status as agencies working for national unity and national economic development to the level of mere profit-seeking commercial ventures.

The Government of Saskatchewan considers nothing less than shocking

the statement made by the Canadian Pacific Railway Company before this Commission that vis-à-vis the local, and presumably the national, community it is "in no different position than a factory, an elevator or a bank." If this statement is to be taken seriously it can only be interpreted as open repudiation by the Company of its responsibilities to Canadian citizens and to the Canadian nation. Saskatchewan can only assume that the Commission will summarily reject all representations of this nature.

Although at least one witness for a province indicated his opinion that the railways were no longer instruments of national policy, the Province of Saskatchewan is firmly convinced that this view has no widespread acceptance among the Governments of the Provinces or among responsible citizens of the Dominion.

It is strongly urged by the Government of Saskatchewan that the railways of the nation, conceived and built as instruments of national policy and heavily endowed by the people of Canada for the better discharge of their responsibilities, must continue to be regarded as instruments of national policy now and throughout the foreseeable future. The economic survival of Canada continues to rest upon effective railway transportation. The Government of Saskatchewan submits that no solution to the problems before this Commission can emerge from a repudiation of the historic role of Canadian railways and the substitution therefor of a laissez-faire concept of a railway operation dedicated solely to the search for profits wherever they may most readily be found.

III. The Crow's Nest Pass Agreement and Grain Rates

The Government of Saskatchewan is clearly on record in opposition to the view that Crow's Nest Pass grain rates constitute an inequity in the Canadian freight rate structure. The contention advanced by other parties before this Commission that Crow's Nest Pass grain rates are inequitable and, indeed, are the only inequity of consequence in the Canadian freight rate structure, must be categorically rejected. The Province of Saskatchewan has taken part in the hearings on export grain rates in compliance with the ruling of the Commission to the effect that evidence concerning these rates would be heard and argued. The appearance of the Province at hearings on these matters is not to be interpreted as signifying acquiescence in any allegation that the export grain rates are inequitable to the railways or to shippers of other commodities.

The submission of Saskatchewan on export grain rates was prepared and presented to the Commission as a separate study entitled An Historical Analysis of the Crow's Nest Pass Agreement and Grain Rates: A Study in National Transportation Policy. The separate treatment was, however, dictated solely by the Province's interpretation of the Commission's instructions concerning hearings on grain rates. These instructions specified or implied that Crow's Nest Pass rates would be dealt with as a separate issue. The Province prepared its materials accordingly.

It must be insisted that the segregation of Crow's Nest Pass rates from all other segments of the Canadian transportation structure is artificial and unrealistic. Their significance can not be properly determined by separate study. There is no possibility of correctly interpreting their place or function within the framework of national economic policy on the basis of their examination in isolation. It is the firm conviction of the Province of Saskatchewan that these rates form an integral part of the Canadian freight rate structure just as the traffic which moves on them constitutes a part of the total movement of Canadian freight. It is one of the most fundamental tenets of the Saskatchewan submission to this Commission that the Crow's Nest Pass Agreement emerged as an essential step

in the furtherance of national economic policy and that the rates established in accordance with the Agreement continue to be indispensable toward that end.

It is the respectful submission of the Province of Saskatchewan that much harm might be done to the national interest in Canada by according credence to the view that Crow's Nest Pass rates on grain can be understood in a historical vacuum or that their economic validity and equity can be assessed by the calculations of electronic computers. The Crow's Nest Pass Agreement was entered into in 1897 by voluntary accord of the contracting parties, the Government of Canada and the Canadian Pacific Railway Company, in circumstances which clearly indicated the necessity of such an accord for the furtherance of national economic policy and for the prosperity and advancement of the Canadian Pacific Railway Company.

There were two areas at the turn of the century where the national interest and the interests of the Canadian Pacific Railway Company required the type of specialized attention which was made specific in the Crow's Nest Pass Agreement: the prairie region and the newly-developing mineral areas of south-eastern British Columbia. Retardation of economic development in either of these territories, or failure to tie such development firmly into the Canadian economy, could not fail to react unfavourably on the national interest and on the well-being of the one transcontinental railway in Canada at that time, the Canadian Pacific. Both difficulties existed in Canada in the 1890s and provided complementary justification for the Crow's Nest Pass Agreement.

In the prairie region the problem was the unexpected and disappointing sluggishness of agricultural settlement. This had been noticeable in the first post-Confederation decade but it persisted in the 1880s and 1890s in spite of the availability of lands under the homestead system and in spite of the completion of the Pacific railway and of substantial branch-line mileage. Distances from markets and from centres of supply of manufactured capital equipment and household goods, combined with high freight rates, rendered discouraging the prospects of settlement and agricultural production. The institution of Sir John A. Macdonald's National Policy of tariff pro-

tection served notice of the intention that manufactured consumers' goods and instruments of production should come from Eastern Canada regardless of the existence of cheaper American supplies closer at hand.

In these circumstances it was not difficult to see how the national interest would be served by securing reductions in freight rates both on the outward movement of the one possible and clearly-indicated export of the prairie region and on the inward movement of the main items of equipment essential for the establishment of farmsteads and agricultural production. The Canadian Pacific Railway Company would be among the first to gain from successful sponsorship of prairie settlement. The importance of long-term stability of transportation charges as an incentive to agricultural development, and the perpetual nature of the benefits that would flow from the economic development of the prairie region, were ample justification for casting the Agreement in terms of perpetuity.

As for the mineral regions of south-eastern British Columbia, there was no concern by the 1880s and 1890s over any lack in their rate of material advancement. Prospecting, discovery and the development of mineral properties were going on simultaneously and rapidly. The mining boom of the Kootenays was, in fact, one of the few clear manifestations of economic vitality and dynamism in Canada as the Dominion entered the final decade of the nineteenth century. The problem was that the region and its economic activities were not part and parcel of the Canadian economy but instead were closely integrated into the sphere of American commercial and transportation dominance. Pacific railway builders in the United States took full advantage of geographic factors which gave them easy access to the rich mining valleys above the international boundary, while the Canadian Pacific Railway Company, constructing its main line through the Rockies on the eve of the major Kootenay discoveries, effectively by-passed the entire region unaware of future events which might have suggested consideration of other possible routes.

Of all Canadian enterprises, none had a more obvious or more immediate concern than the Canadian Pacific Railway Company in breaking the hold of American business interests on the profitable economic life of the Kootenay

Valleys. Years before the Crow's Nest Pass Agreement was entered into, or even mooted, the Company had declared the necessity of moving into the Kootenays and had acquired effective dominance of transportation facilities within the region. They had also determined the steps by which the region was to be tied to their transcontinental railway system, by entry from the south-western plains through Crow's Nest Pass, and had secured the branch from Dunmore to Lethbridge pointing to the obvious extension. With or without assistance from the Dominion Government they would have attempted to wrest control of the economic life of the region from their American counterparts. The Crow's Nest Pass Agreement gave them welcome financial assistance and made possible the occupancy of the area without further costly and hazardous delay. The stakes were sufficiently large amply to justify the assumption of obligations specified in the Agreement.

The Crow's Nest Pass Agreement represented a modification of national economic and transportation policy to meet more effectively the emergent requirements of the day. In the Agreement the Dominion Government and the Canadian Pacific Railway Company reaffirmed their joint and inseparable interest in Canadian economic development and in Canadian economic unity. The Agreement provided or implied adequate consideration for the contracting parties. The President of the Canadian Pacific Railway Company correctly interpreted the situation and summarized the prospect in 1896 when he reported that "The interests of the country at large are so much concerned in this question [of a railway through the Crow's Nest Pass] that your Directors confidently expect reasonable assistance at the hands of the Dominion Government."

Parliamentary debates and other evidence indicate with reasonable clarity the advantages which the contracting parties anticipated from the implementation of the Crow's Nest Pass Agreement. The indications are that the Federal Government passed the Crow's Nest Pass Act and entered into the corresponding Agreement in order to accomplish the following objectives:

- (1) the more rapid development of the highly promising mineral area of southern British Columbia, (2) the effective integration of this area into the Canadian economy in defiance of geographic facts and despite American designs, (3) the

enlargement of the prairie and inter-mountain markets for eastern manufacturers through the provision of lower freight rates on the western movement of certain important products, (4) the stimulation of agricultural settlement and general economic expansion in the Prairie Provinces by means of the statutory assurance of lower and stable grain rates and lower rates on the inward movement of capital equipment, and (5) the acceptance by the Canadian Pacific Railway Company of the principle of governmental rate control in the national interest, without qualification or reference to any level of the Company's earnings.

The Crow's Nest Pass Agreement offered to the Canadian Pacific Railway Company immediate and determinate advantages of a substantial nature and a number of more remote but immeasurably more valuable prospects for realization throughout succeeding decades. Among the more obvious of the immediate financial advantages was the subsidy to be provided out of public funds, sufficient to cover more than 40 per cent of the cost of the Crow's Nest line as estimated in advance by officials of the Company. Construction of the line with government backing would also place the Company in a position to acquire and exercise the franchise of the British Columbia Southern Railway Company and thus to come into possession of some three and one-third million acres of land (as estimated by Company officials in 1898) plus six square miles of coal lands in grant from the Province of British Columbia. The land grant amounted, in fact, to over three and three-quarter million acres.

Substantial as were the immediate benefits accruing to the Canadian Pacific Railway Company from the Crow's Nest Pass Agreement they formed no significant part of the central purpose involved and for the early accomplishment of which the Company welcomed public assistance. This purpose was the winning back of the economic life of south-eastern British Columbia from its American possessors and the establishment of the Canadian Pacific Railway Company in their place. There was at stake in perpetuity an inland empire, a rich domain which by the accident of an arbitrary boundary lay territorially and politically within the Dominion of Canada but whose economic loyalty was unquestionably to the United States. American transportation and commercial interests had secured complete dominance of the mercantile life of south-

eastern British Columbia before the main line of the Canadian Pacific Railway reached the Pacific and the Canadian company eventually ousted the "inter-lopers" only with the utmost difficulty.

The economic conquest of the Kootenays by the Canadian Pacific Railway Company was not fully consolidated until the inter-war years. It was a victory, nevertheless, of immeasurable significance for the Company as well as for the nation as a whole. In relation to the national interest the significant point was that south-eastern British Columbia came to form an integral part of the economic structure projected by national economic policy. That tremendously wealthy and productive territory became for the first time a part of the Canadian economy, its markets in large part assured to the eastern Canadian manufacturer and its incoming and outgoing traffic assured to the transcontinental line of the Canadian Pacific Railway Company by availability of service and by protective tariffs. The revenues derived from the movement of this traffic have contributed, and continue to contribute, to the security and prosperity of the Canadian Pacific Railway Company.

The conquest of the Kootenay district which was made possible by the construction of the Crow's Nest Pass railway presented to the Canadian Pacific Railway Company the opportunity to diversify its activities in a variety of ways which could scarcely have been anticipated either by those who sought and secured the charter for a Pacific railway in 1881 or by those who granted it. In the process of acquiring transportation routes and railway mileage in the Kootenays as a prerequisite to the absorption of the economic life of the region, the Company came into ownership, for a comparatively small sum, of a smelter, an extensive townsite and a contract for ore tonnage for custom smelting. President Van Horne reported to the shareholders of Canadian Pacific for the year 1897 in part that:

"Arrangements have been completed, subject to the approval of of the Dominion Parliament, whereby your Company may acquire the Columbia & Western Railway extending from Robson to Rossland (33 miles) for the sum of \$800,000. With this property will be acquired the smelting works at Trail Creek, and about 270,000 acres of land in the vicinity, these being included in the purchase price named.

"Rossland having become the principal mining centre in British Columbia, it was necessary either to build an independent line

to that place or acquire the Columbia and Western Railway, and the latter was clearly the wiser course."

The Company took over the smelter at Trail on March 1, 1898 and in succeeding years expanded and diversified its equipment, conducted extensive research operations for the improvement of its processes and for the utilization of by-products, and acquired mining properties to assure adequate supplies of raw materials for extraction purposes. In 1906 a consolidation of mines and the smelter was effected as a subsidiary of Canadian Pacific under the name of Consolidated Mining and Smelting Company of Canada Limited.

The Crow's Nest Pass Agreement extended public assistance toward the building of a railway line which gave to the Canadian Pacific Railway Company for the taking the mineral-metallurgical empire of south-eastern British Columbia. The Company has long governed and exploited this empire through the agency of its subsidiary, the Consolidated Mining and Smelting Company, in which Canadian Pacific owns about fifty-one per cent of the capital common stock. The Province of Saskatchewan has placed on record in these hearings (see An Historical Analysis of the Crow's Nest Pass Agreement and Grain Rates, p. 49) a statement of the dividends which the Canadian Pacific Railway Company received from the Consolidated Mining and Smelting Company annually for the past twenty-five years. These dividends exceeded \$220 million from 1935 to 1959 and averaged well over \$12 million a year throughout the decade 1950 to 1959.

Export grain rates have not been governed exclusively by the Crow's Nest Pass Agreement since the Crow's Nest Pass Act was passed. The Agreement was suspended entirely in 1918 and only partially restored in 1922. To circumvent a near impasse between Canadian Pacific and the Government, the Canadian Parliament intervened in 1925 and wiped out all limitation on rates under the Crow's Nest Pass Agreement except for those on grain and flour. Manufactured goods have since that time been totally exempt from the restrictions agreed upon by the Canadian Pacific Railway Company in 1897. In 1927 the Board of Railway Commissioners directed Canadian Pacific and all other railways to adjust rates on grain and flour moving from all western points to Fort William, and through Pacific coast ports for export, to the

Crow's Nest Pass level. Grain and flour move over the Hudson Bay Railway for export on Crow's Nest Pass rates.

The Crow's Nest Pass structure of rates has, it is clear, been extended geographically in so far as grain and flour are concerned but since June 1925 the ceiling has ceased to exist for commodities other than grain and flour. The result is that since that time the railways have been freed from the statutory limitations which had placed an effective limit on rates on a substantial list of capital-goods items moving into the Prairie Provinces from Eastern Canada. This is certainly a substantial, even if indeterminate, concession within the framework of national economic policy.

Legislative and administrative changes made during the 1920s clearly demonstrate the conviction of the Canadian Parliament that the continuance of the level of export grain rates as prescribed under the Crow's Nest Pass Agreement was indispensable for the well-being of the national economy. Nothing which has happened since the rates were first made effective has in any way reduced either the necessity for the grain rates originally assured by the Agreement or the perpetual flow of benefits secured by the Canadian Pacific Railway Company with the help of the Agreement.

The Canadian Pacific Railway Company secured special benefits under the original legislation along with what has amounted in practice to an exclusive [!]entree to one of the great mineral-producing areas of the continent. The process of consolidating transportation facilities in the region led Canadian Pacific to the acquisition of a veritable mineral-metallurgical empire from which the flow of profits has been persistent and substantial.

The Crow's Nest Pass rates on export grain did not create the difficulties of Canadian railways and can not properly be regarded as a problem for which a solution must be provided. These rates were introduced as a means of furthering national economic policies and in the national interest. They have served and continue to serve the causes of Canadian economic development and Canadian economic integration. The benefits that flow from these rates are diffused in generous measure and among a wide variety of economic groups including the prairie farmer and the Canadian railways along with the eastern

manufacturer, the merchant and the Canadian banking and financial system.

In Part VI of this Final Summation and Argument (see below) the Province of Saskatchewan states and urges upon the Commission four major recommendations. The first of these is the recommendation of the Province on Crow's Nest Pass rates on grain and flour moving into export positions.

IV. The Importance of Transportation to the Saskatchewan Economy

The Province of Saskatchewan can never be indifferent to the problem of transportation and the impact of transportation costs. Its settlement was entirely dependent upon the provision of transportation facilities. Specialization in the production of vast quantities of heavy and bulky commodities for distant domestic and export markets makes Saskatchewan peculiarly dependent upon surface transportation media capable of moving these commodities economically and expeditiously. Between Regina and navigable water to the west there is a rail haul of 1,100 miles and from the same city to the Lakehead the distance is 800 miles. Over these vast stretches the cheaper alternative of water-borne movement of bulk traffic is unavailable and movement is entirely by rail or, in the relatively rare circumstances where traffic is suitable for truck movement and where highway surfaces exist, by road.

Stretching east beyond the Lakehead is a great expanse of sparsely settled territory with virtually no agricultural potential and with freight traffic confined largely to that arising from the needs of widely separated paper, mining or railway towns. The industrial centres of Eastern Canada are the source of most of the capital goods required by Saskatchewan people and provide the market for part of the surplus production of Saskatchewan farms. Foodstuffs produced in the Prairie Provinces, grain and flour, meat and butter, eggs and poultry, are essential to the large consuming centres of Eastern Canada. The prairie market for agricultural machinery, household appliances, clothing and processed food products is essential to the preservation of the manufacturing economy of Ontario and Quebec.

Transportation is as truly a matter of national concern today as it was when the railways were first envisaged as the leading instrument for national unification.

Throughout the history of western agriculture there has been a steady trend toward mechanization in an effort to reduce costs and make farming operations more efficient in face of the many natural and economic hazards

which beset the industry. The farmer has been quick to apply new techniques and new machinery as they have been developed. Farm implements have accordingly increased in variety, numbers and weight and the farmer must rely upon overland transportation from distant manufacturing centres to bring in this essential machinery. In like manner prairie consumers, both rural and urban, are dependent upon distant sources of supply for household appliances and consumer goods generally. It may be emphasized here that the intent of national policy is clearly reflected in the continuing inter-dependence of the economies of the various parts of Canada. Transportation is the essential unifying factor.

Part I of the Saskatchewan submission presented a comprehensive statement of the development and present status of the Saskatchewan economy, both agricultural and non-agricultural. The importance of transportation and the indispensable role of railways in particular in the development and preservation of the economy of Saskatchewan and the overwhelming importance of wheat in the economy were clearly shown. Developmental circumstances as well as the present position of the Province were emphasized because of the firm conviction of the Government as expressed in the submission in the following words:

"A thorough understanding of the economy of today and of recent changes in it is essential to the formulation of transportation policies suitable to the complexities of present-day circumstances. Nevertheless, by itself such an understanding is wholly insufficient. Sound policy is evolutionary: it demands continuity. A national transportation policy need not, indeed cannot, be created de novo. It must build on the experience of past decades with adaptations appropriate to changing conditions. National transportation policy in Canada is as old as the national government. It has never stood alone but rather has always been closely integrated with national policies of trade, the encouragement of manufacturing and the fostering of national economic development." (Saskatchewan Submission, Part I, p. 77).

Saskatchewan remains relatively exposed and vulnerable to increases in railway freight rates in spite of a growing diversification of the provincial economy and in spite of the development of competition from other transportation media. The Government of the Province has been and is active in attempting to broaden the base of the provincial economy by encouraging the development of secondary industries. These efforts have not been entirely without success and the results have been outlined in Part I of the

Saskatchewan submission. At the same time the Government was careful to make clear in that submission that the present stage of industrialization in Saskatchewan gives little hint of a reduction in the dependence of the residents of the Province on the mass-production, manufacturing centres in Central Canada. From these areas and over the extremely long intervening distances must continue to come practically the Province's entire requirements of productive machinery and heavy structural materials, automobiles and trucks, household equipment and furnishings. The continuing vital importance of transportation services and costs in the economic life of the Province is scarcely open to doubt.

The view has been expressed before this Commission and elsewhere that high freight rates might be acceptable in the Prairie Provinces as a means of fostering local industry. It must be insisted that there is no general or appreciable sentiment for so divisive a policy. Saskatchewan wishes to develop local industry appropriate to the region by every economically sound means available. The Government of the Province rejects most emphatically and categorically, however, any suggestion that the rate structure should be used in Western Canada as a protective tariff behind which local industry might be permitted to develop and flourish at the expense of the primary producer and the consumer.

The Government of Saskatchewan is fully cognizant of the growth and increasing pervasiveness of competition from the motor truck. Indeed the emergence of the trucking industry as a major factor in Canadian transportation has led the Province to make one of its major recommendations on this particular matter. Yet, notwithstanding this growth, Saskatchewan continues to be dependent to a predominant degree upon railway transportation.

Service by truck tends to present a more difficult problem in Saskatchewan than in most other areas in Canada. The provision of hard-surface roads permitting efficient service at all times to the people would require a highway system far beyond the resources of the Province's thinly spread population. Indicative of the highway problem in this Province are the figures on mileage of highway and rural roads in Saskatchewan. In 1958

Saskatchewan had 121,000 miles of highway and rural roads compared with Alberta's 64,000, Ontario's 72,000 and Quebec's 51,000 miles. Although good progress has been made in this Province with the development of a highway system, pavement still represents a very small part of the total road mileage. Other provinces have a greater concentration of population and are therefore more readily serviced by road transport. British Columbia and the Maritimes have ocean transport available to the vast majority of their population while Central Canada enjoys the maximum benefit from subsidized inland waterways which permit service by a wide variety of carriers including ocean vessels. Not only do these parts of Canada have alternate modes of transportation service but at the same time railway rates are kept under control by the competition which they afford.

The fact that Saskatchewan has long transportation hauls and obtains less benefit from water and truck competition than other provinces means that the impact of increases in railway freight rates must continue to fall with increasing severity on this Province. Truck transportation will unquestionably continue to increase, particularly when the Trans-Canada Highway is completed, but geography, topography and the nature of traffic movements make it abundantly clear that Saskatchewan will continue to be the region relatively most dependent upon railways and therefore the most vulnerable to any increases in railway freight rates.

While no analysis by provinces is possible, the figures presented by Mr. L.J. Knowles, a member of the Board of Transport Commissioners, to the House of Commons Standing Committee on Railways, Canals and Telegraph Lines on April 14, 1959 clearly indicate the disproportionate regional impact of successive horizontal freight rate increases. Mr. Knowles estimated that 56.7 per cent of the normal rated traffic (that to which the increase would be automatically applied) moved on the western region compared with 26.5 per cent on the central region, comprising Ontario and Quebec, and 16.8 per cent on the Maritime region.

The Government of Saskatchewan strongly reiterates its belief that the Province carries an unduly large share of the burden of railway freight

charges relative to other areas. Some redistribution of this burden is essential if the Province is to make its full contribution to the economic well-being of Canada.

V. The Rate Structure and National Transportation Policies

Saskatchewan has taken the position before this Commission, as indeed it took before the Turgeon Royal Commission, that nothing worth-while can be done to ease the heavy burden borne by the relatively exposed regions of Western Canada within any rate structure capable of implementation.

Following the enactment of the equalization clauses of the Railway Act in accordance with the recommendations of the Turgeon Commission, the Board of Transport Commissioners proceeded to carry out its legislative directive. The promulgation of an equalized class rate scale brought about uniformity of ceiling rates for the various classes which had previously been at differing levels from region to region. Thus some simplification was introduced. Coupled with revisions in the Canadian Freight Classification the adoption of the equalized class rate scale brought some reductions in ceiling rates applicable in Western Canada and, on the whole, Saskatchewan benefited from these proceedings. Continuing general increases in railway freight rate levels in the post-war years have, however, more than offset any advantages or reductions worked under the class-rate equalization proceedings.

At no time has this Province been able to see relief in prospect from the equalization of commodity mileage scales. To the extent that these scales have been revised under the equalization proceedings and to the extent that others will undergo revision following the termination of the freight rate "freeze" the fears expressed appear amply to have been justified. There is every indication that equalization of commodity rates will, with some exceptions, raise rather than lower the costs in Western Canada of such movements.

In the meantime, competition has grown in intensity and pervasiveness. It would be idle to suggest that competition to the railways is totally absent in the Prairie Provinces or that it cannot be expected to increase in this area. Nevertheless, the prairie area may expect to continue to bear a major share of the burden of rail transportation costs. As long as "captive" traffic remains for the railways it will be found largely on the prairies. It is extremely unlikely that any scheme depending solely on manipulation of the rate structure can be devised which will redistribute the burden more equitably and still keep

the railways solvent.

Saskatchewan's views with respect to the one and one-third rule and agreed charges were set forth in Part III of its general submission. The Government of Saskatchewan does not recommend any changes in the provisions for making agreed charges. Shippers who find the device useful should have the privilege of negotiating an arrangement with the railways. In lending its support to this method of rate making the Government of this Province assumes, of course, that the Board of Transport Commissioners or such regulatory authority as may emerge from these proceedings will exercise particular vigilance to ensure that no shipper is prejudiced or discriminated against by virtue of any agreed charge. The Province also assumes that the regulatory authority has or will have adequate jurisdiction to examine the propriety of rates agreed upon to see that they meet all the conditions specified in the Railway Act as pertaining to other competitive rates.

The one and one-third rule, designed to relieve the burden of high rates in intermediate territory, has fallen far short of its objective. This has resulted from adjustments or cancellations of transcontinental competitive rates and by the institution of transcontinental agreed charges to which, it was determined, the rule does not apply. If the rule were made to apply on agreed charges, railways would either have to forego the transcontinental traffic with resultant loss of revenue or forego a part of their revenue derived from shipments to or from intermediate points. The constant and seemingly ever-increasing pressure upon the railways to obtain more revenue to meet rising costs and their relative dependence upon the vulnerable and exposed traffic of intermediate territory to obtain such additional revenue strongly suggests that relief through the device of the one and one-third rule, even with its widest application, will continue to be illusory in the future as it has been in the past.

Saskatchewan is convinced that there is no effective alternative, within the rate structure, to horizontal percentage increases to meet rising railway costs. Various alternatives have been suggested to the Commission aimed at redistributing the incidence of increases in such a way as to relieve the impact on the long haul by imposing a greater proportion of any authorized increase on

the shorter haul. One of the schemes advanced before your Commission involves subjecting the short-haul rates to a greater rate of increase than long-haul rates on the assumption that terminal costs have advanced proportionately more than line-haul costs. It has been suggested that the imposition of such higher rates of increase on short hauls would enable the railways to give relief on long-haul rates. This would seem to be impracticable since short-haul traffic is already under severe competitive pressure and is steadily becoming more and more subject to truck competition. The higher the railway rate on the short haul the more exposed this traffic becomes to loss to trucks. Relief on the long haul is certainly not possible on the basis of mere paper rates which are falsely assumed to be applicable on the short haul.

Various proposals have also been made for the adoption of selective rate increases as a possible variation from present practice. Such increases are actually in effect today as far as possible. The only question really is whether the selective increases should be made by the regulatory authority at the time that general increases are authorized, or by the railways afterwards on the basis of negotiations with shippers having regard to the necessity for traffic to move freely and for the railways to maximize their earnings. In this the interests of the railways and the shippers come close together.

Clearly the horizontal percentage method of applying increases in freight rates works to the serious disadvantage of the distant shipper competing in a common market with a near-by shipper. The latter may, in fact, have the added advantage of carrier competition and thus escape increases altogether. The Saskatchewan Government's views in respect to the horizontal increase issue can be summarized as follows:

"Analysis of the problem is easy but a solution is hard to come by. The reason for the difficulty and perhaps the impossibility of finding a solution within the rate structure relates directly to the basic premise that freight rate increases must be sought and obtained in areas of semi-monopoly and on captive traffic, from which the burden cannot be shifted. Admittedly, additional revenue can from time to time be obtained from competitive rates, but in the long run freight rate increases fall with cumulative severity on the areas in which competition is relatively limited. Even if variations such as hold-downs or exceptions [i.e. selective increases] are used or if some combination of percentage increases and increases in terms of flat cents per hundred pounds is adopted, the inevitable fact remains that such increases can seldom if ever be fully applied

in competitive areas. Under whatever method may be used and as long as increases can still be applied anywhere, the areas of semi-monopoly will bear the brunt. Put simply and with brutal frankness, the horizontal increase method is, in effect, a device or technique for applying increases to areas where increases can be made to stick." (Saskatchewan Submission, Part III, p. 13).

A study of the various features of the rate structure presently in effect and of proposals which had been made on earlier occasion led the Government of Saskatchewan to conclude, when it prepared its submission to this Commission, that solutions must be sought elsewhere than within the limits of the rate structure. The problem is so deeply rooted in the economic and political circumstances of the past Saskatchewan concluded that it is not amenable to solution by adjustment in rates.

A number of schemes have since been proposed by other provinces which, in effect, suggest that on the basis of their analysis of the transportation problem they hope that solutions may in fact be possible by doing no more than making revisions in the rate structure and in rate-making procedures.

The Government of Saskatchewan has carefully examined the various proposals of this nature which have been advanced and notes that their basic objectives are the same as those sought by the Province of Saskatchewan, namely, the alleviation of the costs of the long haul and the burden which rests upon exposed and vulnerable areas. These objectives must clearly commend themselves to the serious consideration of the Commission. Saskatchewan is of the firm opinion, however, that none of the proposals advanced for the modification of the rate structure would be practicable in application or, even if implemented, would bring about the necessary relief. The Government of this Province is convinced that there is nothing more dangerous than that this Commission should be misled into acceptance of plausible proposals which would actually turn out to provide no solution at all and which could only leave real solutions hidden or unrecognized.

A number of the schemes put forward by other provinces have a common element in a deliberately increased reliance on cost of service. There appears to have developed a strong tendency in certain quarters to look upon the cost-of-service principle as offering a new and revolutionary approach to the science

or art of rate making. In this movement certain of the provinces appear to be outdistancing the railways which, despite their slavish attention to alleged costs in isolated segments of the case before this Commission, have shown no inclination to discard in any general way the principles of rate making which have behind them the sanction of generations of successful usage.

In the preparation of its submission the Province of Saskatchewan concluded that it was highly improbable that any change to a cost-of-service basis for rate making would enable the railways to provide lower transportation charges for Canada as a whole or that it could effect a more equitable distribution of the costs of railway service. Examination of the various briefs submitted to the Commission has only served to strengthen the reservations of the Province concerning the efficacy of any significant increase in the existing degree of reliance on cost of service in the formulation of the rate structure. Competition renders it impossible to avoid attention to cost factors in some degree under any principle of rate formulation but, beyond that, individual cost calculations may lend a wholly spurious air of scientific accuracy and equity to rate relationships.

The position of the Province of Saskatchewan regarding cost of service is stated clearly in Part III of its submission. The Province freely concedes that statistics and other costing techniques may be helpful in the formulation of broad generalizations but extreme care must be taken in appraising the uses to which they may be put. The Government of Saskatchewan is convinced that there is serious danger of self deception in attempting to split total costs of railway operation into arbitrarily selected individual segments in order to arrive at figures which purport to represent actual costs of individual shipments or of the movement of individual commodities. The circumstances surrounding different freight shipments vary so widely as to defy classification except on a wholly arbitrary basis.

Saskatchewan submits that the impact of costs is always at work in rate formulation, not as a deliberately imposed stratagem in the rate structure, but effective nonetheless. The presence of competitive rates which are forced upon the railways by cost-based truck rates is clear evidence of this fact.

The natural desire of the railways to maximize traffic and net income must surely afford reasonable protection against lack of proper consideration of costs in railway rate making.

Proposals have also been made to your Commission for the adoption of some new form of maximum rate control. Maximum rate control is, of course, already exercised in Canada by the Board in its supervision of class rate scales as amended from time to time following general revenue cases. The Province of Alberta proposes a new method which for convenience may be described as the one hundred and forty percent rule. This would control the maximum rate for any commodity movement by limiting the spread between the lowest and the highest rates to be charged on a given commodity under comparable conditions.

As Saskatchewan understands the Alberta proposal, if it were implemented no rate for a commodity could exceed by more than forty per cent the lowest rate charged on that commodity for a comparable length of haul any place in Canada. The proposal was admittedly inspired by the same reasoning as that which gave rise to the one and one-third rule. In this instance, however, the device would be applied throughout the entire rate structure of the Dominion. Whenever the railways proposed to negotiate a competitive rate, either in the ordinary way or through the agency of an agreed charge, they would have to consider the effect on comparable traffic throughout the whole of the Dominion. Because of this circumstance the Alberta proposal would, in fact, constitute a most restrictive and pervasive form of control and would seriously interfere with the freedom of the railways to attract and hold traffic.

Aside from the practical difficulties mentioned above the Alberta proposal seems to ignore the revenue requirements of the railways. It does not provide for any alternative source of revenue to compensate for reductions that would be instituted under the scheme (assuming it were effective in achieving its objective of holding down the level of maximum rates). Furthermore it is difficult to understand how this proposal could, as claimed, eliminate freight rate increase applications by the railways unless these essential public utilities were to be left entirely to their own devices with the status of ordinary

commercial, profit-making enterprises and with complete freedom to incur bankruptcy, uninhibited by any concern on the part of government or the public.

In spite of suggestions to the contrary made from time to time, Saskatchewan believes that the railways today have the widest possible latitude, through competitive rate and agreed charge provisions, to meet competition and maximize their earnings. The adoption of the one hundred and forty per cent rule would in the opinion of this Province tend seriously to limit and in some cases to destroy that latitude and railways and shippers alike would undoubtedly suffer. The Government of Saskatchewan commends the objective which this proposal is designed to achieve, namely, protection of exposed and vulnerable regions against excessively high freight rates, but has no confidence whatsoever that such a device offers a practicable means of achieving this objective.

The Province of Saskatchewan has given a great deal of study to the question of subsidies as applied to transportation. In presenting argument before the present Royal Commission the Province recognizes that a permanent or at least a long-run solution to the Canadian transportation problem is being sought, that a short-term solution will not satisfy the needs of the nation. The experience of the past fourteen years has amply demonstrated that Canadian transportation difficulties are of a basic and persistent nature. It is in this context that the Government of Saskatchewan has considered its position before this Commission and has formulated its suggestions and recommendations.

In sharp contrast to previous inquiries your Commission has heard proposals from practically all those who have appeared before you for applying the subsidy device in some form or other. The Government of Saskatchewan recognizes its responsibility to examine the various proposals that have been made and to comment upon them. Subsidies may be divided into three broad classes all of which have been referred to in submissions to the Commission. The first type includes, broadly, the provision, at public expense, of facilities such as harbours, locks, canals, airports, highways, and the substantial aid designed to secure railway transportation facilities in Canada. Beyond noting that this

form of subsidy has been employed to the advantage and development of all modes of transportation and that such assistance indicates a national concern for each, this type of subsidization may be left without further comment other than to express the opinion that such expenditure of public funds is wholly warranted in the development of these important assets of the nation.

This leaves for consideration the various deficit subsidies which have been proposed and the rate reduction type of subsidy suggested by Saskatchewan. At this point it is proposed to deal only with deficit subsidies.

The term "deficit subsidy" is used here to describe those which would be paid out of the Federal Treasury to compensate the railways for alleged losses on specific segments of freight or passenger traffic, on the operation of branch lines, or on particular services provided for the public. The position of the Government of Saskatchewan on proposals of this type is unequivocal. It rejects emphatically the adoption of the deficit subsidy approach in any amount, in any form and for any alleged cause. The weaknesses of deficit subsidies can be set forth briefly.

- (i) They would require annual determination of the amount of the deficit which the subsidy was designed to overcome, This is true whether the subsidy was designed to apply to certain freight traffic, passenger traffic, the operation of a particular branch line or a group of branch lines or to compensate for certain services conducted in the interests of the public or for national policy considerations. Saskatchewan rejects the idea that such a determination is possible within the bounds of reasonableness. It is submitted that no acceptable or practicable formula could be devised which would provide the required basic information on a segment of railway operations.
- (ii) They would tend to destroy managerial incentive to ensure greater efficiency and to explore newer and less costly methods by the employment of technological improvements.
- (iii) They would be cumulative and largely uncontrollable in character and would tend to provide a blank cheque on

the Federal Treasury. Deficit subsidies would inevitably lead to a complete and comprehensive underwriting of railway operations by the Federal Government.

- (iv) They would make adjudications on revenue cases extremely difficult and could seriously interfere with the normal processes of rate making.

It is the considered view of the Government of Saskatchewan that to subsidize alleged and highly debatable deficits on fragmented portions of such a highly integrated enterprise as a railway, while preserving rates at so high a level that shippers are driven to alternative modes of transportation, would be the worse of all possible attempts at a solution to the Canadian railway problem.

On the contrary the subsidy proposal of Saskatchewan to which extended reference will be made later, would, it is submitted, obviate the above objections and operate to the advantage of the public and the transportation agencies alike as well as facilitate the interchange of the products of the various regional economies.

A good deal has been placed in evidence before this Commission concerning branch line abandonment and service reduction. The position of the Province of Saskatchewan on these matters can be stated clearly and concisely. It is the view of the Government of Saskatchewan that the present legislation and the practices of the Board of Transport Commissioners developed within the framework of that legislation are reasonable and fair to the railways and to the public alike and there is no justification or reason for proposing any changes.

Because of the highly restrictive nature of the legislative amendments suggested by the Canadian Pacific Railway Company the Province of Saskatchewan rejects them categorically. They would virtually exclude effective opposition to any applications for abandonment and would remove entirely from the purview of the Board consideration of evidence of loss and inconvenience to the public as factors in the Board's decisions.

The extension of branch lines by the Canadian Pacific Railway Company was a matter of deliberate policy not completely disassociated from the desire to enhance the value and marketability of lands with which the Company was generously endowed. Canadian Pacific's proposals imply repudiation of any responsibility to consider the position of the residents served by branch lines which from time to time the Company may feel disposed to abandon. This repudiation of responsibility should not be tolerated and the Commission should, in the opinion of the Province of Saskatchewan, reject emphatically proposals which would in effect leave without protection or possibility of redress those who have a legitimate interest in the continuity of railway service.

The proposals of the Canadian National Railways are less harsh. Canadian National acknowledges public responsibility as an instrument of national policy in that provision is made in its proposal for continuity of lines and services, where required, with the aid of a national subsidy. This, of source, is one of the forms of deficit subsidy which the Province of Saskatchewan has rejected as being inappropriate and impracticable. Its application would tend to obscure the real problem.

The Province of Saskatchewan therefore reaffirms its conviction that no change should be made in respect of present procedures in determining the merits of and adjudicating upon line abandonment cases.

One further point of policy and procedure remains to be considered. Decisions of the Board of Transport Commissioners under the present legislation are subject to appeal on questions of law to the Supreme Court of Canada and on other matters as appeal may be made by way of petition to the Governor-in-Council. The Government of Saskatchewan sees no virtue in any amendments to the Railway Act or changes in practice in respect of this matter. As the Board of Transport Commissioners is a court of record whose decisions are legally binding it is but proper that an appeal on questions of law should be taken to the Supreme Court of Canada. Presumably any other regulatory body which might arise from the recommendations of the Commission would have the same status.

The Province of Saskatchewan has consistently urged that railways cannot

be treated as ordinary business entities. Their actions, even though legal, have such widespread ramifications on the economy of the country that it follows that the Government of Canada must always be concerned from the standpoint of public policy and no impediment, therefore, should be placed in the way of legitimate petitions to the Governor-in-Council. This applies regardless of whether or not the subject matter has been reviewed and adjudicated upon by the Supreme Court. The Government of Saskatchewan therefore respectfully urges that no recommendation be made which would alter the present provisions in respect of appeals to the Supreme Court or petitions to the Governor-in-Council.

VI. Recommendations of the Province of Saskatchewan

The Government of the Province of Saskatchewan has four major recommendations to urge upon the Commission. These are stated and elaborated upon briefly below.

1. The Government of Saskatchewan recommends that the Crow's Nest Pass rates on grain and flour moving into export positions be retained under the protection of Parliament and maintained in their present form and at their present level without any change.

The position of the Government of Saskatchewan on Crow's Nest Pass rates on grain and grain products was made abundantly clear in the submission presented to the Commission, in the defence of that submission by the witness for the Province, and in Part III above of this Final Summation and Argument.

At the organization meeting of the Commission in Ottawa, the Province of Saskatchewan urged that the subject of export grain rates was not one for consideration by the Commission under its terms of reference. At the same time Saskatchewan urged most strongly that the Crow's Nest Pass Agreement and the corresponding rates on grain and grain products constituted fixed and deliberate national policy, determined in perpetuity, and that evidence on costs associated with the movement of these products was entirely irrelevant. Although the Commission admitted evidence on costs and revenues the Province has strictly adhered to this position and firmly reiterates it at this time.

An unconscionable proportion of the Commission's time and energy has been absorbed in receiving evidence on the cost of handling export grain. Saskatchewan nevertheless submits that no reasonable finding can possibly be made by the Commission on the basis of the figures placed before it or of the concepts which purport to give meaning to the figures. Saskatchewan emphatically rejects as wholly unreliable, unrealistic and unproven any conclusions reached on the basis of costing a single segment of railway freight traffic, hived off by itself without regard for other traffic which it engenders or with which it dovetails in the utilization of plant and equipment. Railway operations are too highly integrated and complex to permit useful or usable conclusions to be drawn in this way. When on top of all these obvious

defects the grain study covers only one year in a history of well over half a century of grain movement the whole argument becomes absurd.

Saskatchewan urges that the Commission must, in all reason, completely disregard the allegations made before it which would single out the movement of grain as the cause of the dilemma of the railways. It is the firm belief of this Province that the only effect of the many long and dreary days and weeks devoted to cost analysis in this inquiry has been to obscure the underlying problems of the railways and to hinder rather than help the Commission in seeking an appropriate and adequate solution.

The Crow's Nest Pass rates on grain and grain products moving from the prairies to export positions have, since their inception, constituted a fundamental and integral part of national economic policy. Saskatchewan refutes the allegation of the railways that these rates impose a burden on the railways or that they are the root of the railway problem. On the contrary, great benefits have flowed from these rates to the railways, to Canadian industry, to Canadian trade, and to national unity as well as to western Canadian agriculture.

The historical and analytical evidence concerning the Crow's Nest Pass Agreement and grain rates which was presented in detail to the Commission has been summarized in preceding pages. The final conclusion is that nothing could conceivably be more unacceptable to the people of the Prairie Provinces than action which would constitute tampering in any way with Crow's Nest Pass grain rates. Adoption of the railways' proposals in this matter would be the thin edge of the wedge leading in the near future to the utter destruction of the export grain rate structure. The Government of Saskatchewan urges in the strongest possible terms the complete rejection of the railways' proposals and the maintenance of export rates on grain and flour under the protection and control of Parliament in their present form and at their present level without any change.

2. The Government of Saskatchewan recommends that the existing division of assets and revenues of corporate railway enterprises as prescribed by the Board of Transport Commissioners in the Uniform Classification of Accounts be changed to provide that all assets employed in surface transportation

(excluding ocean shipping) be classified as making up rail enterprise and that all revenues arising from surface transportation services be brought to account in the determination of monetary requirements in revenue cases arising out of applications for increases in railway rates.

The treatment of income received by railway companies, notably Canadian Pacific, from enterprises and assets other than those indispensable to the operation of rail services has been a matter of controversy in post-war investigations. The Government of Canada designated this as one of the items for investigation by the Commission under clause (d) of the terms of reference which directs the Commission to determine "whether, and to what extent, the Railway Act should specify what assets and earnings of railway companies in businesses and investments other than railways should be taken into account in establishing freight rates."

The fundamental position of the Government of the Province of Saskatchewan on this question is that the Canadian Pacific Railway Company was created, with substantial public assistance, for the sole purpose of building and operating a railway in perpetuity. Other assets and other enterprises have accrued to the Company either in the form of gifts from the Crown or from the proceeds of railway operations. It is the contention of Saskatchewan that all assets of the Company ought therefore to be regarded as rail assets to assist the Company in the discharge of its responsibilities.

The original agreement between the Government of Canada and the Canadian Pacific Railway Company specified the responsibilities which the Railway was required to discharge in return for valuable consideration received by the Company. There appears to be a tendency to forget or at least to minimize the fact that one of these responsibilities was the perpetual operation of a railway. Saskatchewan contends that the mere building of the line did not satisfy the conditions for which the substantial grants and other aids were given. Such an assumption would be patently absurd. The Government of Canada, in aiding the Company, was certainly concerned with its continued operation. It is the position of the Government of Saskatchewan that all assets of the Canadian Pacific Railway Company are corporate assets designed to support and assist the Company to honour the agreement which it made to operate a railway in perpetuity.

Saskatchewan believes that possession of other assets and other enterprises has materially strengthened the borrowing position of the Company when funds have been required for improvements to the railway plant. Saskatchewan feels that this is perfectly proper and, indeed, that this is the use to which it was originally intended that the other assets of the Company should be devoted. It is of the utmost importance, in the opinion of this Province, that the corporate structure be preserved intact in order that all assets of the Company may be utilized as reserves in support of the continued operation of the railway.

The treatment of income from the other enterprises of the Company poses a somewhat different and more difficult problem. The uniform classification of accounts prescribed by the Board of Transport Commissioners specifies those revenues which are to be regarded as rail and those which are to be regarded as non-rail. It is not the purpose of this summation to go into detail in respect of the various allocations. Saskatchewan does, however, wish to express its opinions and make certain recommendations in regard to this particular phase of the Commission's inquiry.

The two major railways in Canada today are much more than railway companies. They may more properly be described as transportation companies, for they are both active in several fields of transportation. Canadian Pacific operates a most complete transportation system by rail, by road, by water and by air and particularly substantial development has taken place in the highway operations of this system. Both Canadian Pacific and Canadian National have given evidence before the Commission of the progress made with their plans to integrate their rail and road operations for the purpose of developing a flexible, co-ordinated merchandise service. Saskatchewan feels that such integration is likely to result in improved service to the public and to expand the traffic potential of the railways. To the extent that steamship operations on inland waterways are also used in such integration the same comments apply.

This development renders obsolete the present division between rail and non-rail for the purpose of determining the revenue position of railways

in general rate cases. The co-ordination of surface transportation media has rendered it improper and indeed impracticable to maintain a segregation between rail on the one hand and road and inland steamship operations on the other. It is, therefore, the opinion of the Government of the Province of Saskatchewan that all surface transportation operations of railway companies and their transportation subsidiaries including piggyback service performed for company-owned as well as for for-hire truckers should be brought to account in determining the financial position of railway companies for the purpose of determining appropriate levels of freight rates. The Province of Saskatchewan recommends that this be done.

3. The Government of Saskatchewan recommends the establishment of a unified system of transportation control through a National Transportation Authority.

The views of the Province of Saskatchewan on the question of regulation and control of transportation media were set forth in Part III of the Province's general submission and were developed in some detail by Dr. G.E. Britnell in his appearance before the Commission as witness for the Province. In its submission Saskatchewan stated:

"... the Government of the Province of Saskatchewan urges that this Commission recommend to the Government of Canada the creation by a separate act of Parliament, of a Canadian 'Transportation Authority' to combine and include the present functions, duties, and responsibilities of the Board of Transport Commissioners for Canada, and that such Transportation Authority be empowered especially to extend its jurisdiction to the regulation and control of inter-provincial and international motor truck transportation. This agency would have as its objective the further co-ordination of transportation services in the interest of the public with a view to insuring the most effective use of all transportation facilities. A move in this direction at this time is a logical and necessary extension of the historic national policy of the regulation of transportation services in Canada." (Saskatchewan Submission, Part III, pp. 20-1).

The type of unified system of transportation control now proposed by the Government of the Province of Saskatchewan obviously was in the minds of the members of the Turgeon Commission in 1951. Their views on the matter of regulation and co-ordination were expressed in the following words (Report of the Royal Commission on Transportation, 1951, p. 279):

"In so far as Parliament can regulate and control transportation, the object should not be confined to the rather negative work of correcting abuses, but should reach out to the positive constructive task of developing adequate and efficient transportation services and of 'co-ordinating and harmonizing' the service in the public interest. The regulation of railways can best be exercised by combining it with the regulation of the other agencies of transportation."

Pointing out that three separate agencies then controlled Canada's transportation system - the Board of Transport Commissioners, the Air Transport Board and the Canadian Maritime Commission (to which a fourth, the National Energy Board, has since been added) - the Turgeon Commission indicated the extreme difficulty of securing anything in the nature of a unified national transportation structure under these conditions, and concluded (as cited in Saskatchewan Submission, Part III, pp. 18-9):

"This anomaly should give way to the constitution of a Central Authority which will be able to take in hand the major task of co-ordinated control, having at its disposal all the benefit acquired from the experience of the separate bodies in recent years.

"The adoption of this policy would bring together the three above named bodies re-organized and united and devoted henceforth to the pursuit of a well planned policy for the co-ordination and regulation of transportation."

The Turgeon Commission did not specify the inclusion of motor transport under its proposed Central Authority but that Commission did consider the trucking industry at some length and commented as follows (Report of the Royal Commission on Transportation, 1951, p. 279):

"All forms of trucking have increased considerably since 1937. The time has come when Parliament might well reconsider this question of control. There seems to be no valid reason why those who carry on a business over which Parliament has jurisdiction (assuming this to be the case) in competition with others who are regulated in respect to their rates and operations should not be asked to submit to a similar form of control. This, of course, does not mean that any one form of transportation should be regulated only for the benefit of another."

The Government of the Province of Saskatchewan endorses the views of the Turgeon Commission in this matter and is in full agreement with the necessity for stressing their concluding proviso.

The Government of Saskatchewan is of the opinion that as a general proposition all major transportation media - railways, motor trucks, ships on inland waterways, aircraft, and pipelines - should come within a system of unified transportation regulation under the jurisdiction of the proposed Canadian Transportation Authority. For most Canadians concerned with overland movement of goods, truck transport is, of course, increasingly occupying the position of the alternative carrier to rail. As a consequence, Saskatchewan has directed its thinking principally to ways and means by which truck transport might be brought into an integrated system of regulation along with rail carriers.

In the opinion of the Saskatchewan Government, intra-provincial truck operations ought properly to come under the jurisdiction of the same regulatory body as that which controls rail and inter-provincial truck undertakings. Since the provinces would probably not all agree at this time to relinquishing control over intra-provincial trucking, Saskatchewan does not envisage such a transfer immediately. Should the Federal Government and the other provinces be interested in the proposal for an over-all transportation authority, the Government of Saskatchewan stands ready to discuss turning over to the Federal Government its control of intra-provincial trucking subject to the preservation of the Province's revenue position and to retention of control by the Province over such matters as weight restrictions and safety regulations.

The Motor Vehicle Transport Act (Statutes of Canada, 2-3 Elizabeth II, c. 59) provides, in effect, for the delegation by the Dominion of its control over inter-provincial trucking to provincial regulatory bodies. The Government of Saskatchewan is strongly of the opinion that the regulation of inter-provincial truck transport should not, in any way, continue to be delegated to the provinces. Saskatchewan is convinced that any over-all Federal Authority, the objective of which was to set up a "unified pattern of transportation regulation" embracing all forms of transport, would break down at once in the event that any significant part of its jurisdiction was delegated. In such a situation, with different personnel attempting to administer the same statute, it is almost certain that the whole structure would founder in a morass of conflicting decisions.

The Government of Saskatchewan recognizes that inter-provincial truck operators may question whether they would derive any advantage from being brought within a system of unified control on a national basis and might indeed fear that any Federal Authority would be subject to domination by the railways. It is the opinion of the Province that one of the main objectives of such a system would be to enhance the stature and status of the trucker. The purpose of the system would certainly not be to put the trucker in a position inferior to that of the rail carrier.

The system which the Province of Saskatchewan proposes would have

certain immediate purposes in controlling inter-provincial trucking which, in the view of the Province, would aid the orderly growth of the trucking industry and add to its long-term strength and over-all status. These purposes may be set forth briefly.

(i) Stability of rates. In order to achieve stability of rates all inter-provincial truckers would be required to file their rates with the Federal Authority and to publish them. The Authority would have the power to determine maximum rates, as the Board of Transport Commissioners now does for railways, and to insure that no rate published by a trucker was less than compensatory. Thus the maximum and the minimum would be subject to regulatory control but the range between would permit competition among the various transportation media.

(ii) Stability of service. The principal requirement to insure stability of service would be control of entry into the inter-provincial trucking field. Criteria would evolve from experience but ought undoubtedly to be related to the objective of co-ordination of all forms of transportation. Public convenience and necessity would presumably be among the bases for the determination of entry along with measures indicating the financial ability and stability of the enterprise. The Federal Authority should, it is suggested, require or encourage operation of trucks inter-provincially on a scheduled basis and ensure the maintenance of a dependable service not only between the terminals but to intermediate points on the route.

(iii) Financial stability. In the opinion of the Government of Saskatchewan, the financial stability of an applicant for a franchise (to be safeguarded by the assurance of compensatory rates) should constitute an important criterion in granting the necessary authority to operate. Franchise holders should, of course, be required to secure minimum insurance on cargo and public liability protection. Closely allied to the determination and preservation of financial stability would be the prescription by the Federal Authority of a uniform classification of accounts for truck operators paralleling the classification of accounts prescribed by the Board of Transport Commissioners for Canadian railways.

(iv) Preservation of competition. The Government of the Province of Sask-

Saskatchewan wishes particularly to emphasize that any over-all system of transportation regulation and co-ordination must not stifle competition. On the contrary it must be designed and administered so that competition between and within the various forms of transportation will continue to have an important place in the determination of what the shipper will pay. There should be adequate safeguards to prevent railway companies, or highway subsidiaries or affiliates of railway companies, from conducting their affairs with a view to the complete removal of their competitors. Similarly the Federal Authority should have the power and should be vigilant to prevent the growth of monopoly among highway operators themselves. Judicious use of control of entry and of rates by the Authority should go far toward assuring the necessary protection to all carriers and the public as well.

(v) Uniform standards in equipment and operation. It is Saskatchewan's view that uniform basic or minimum standards of equipment should be established and enforced as a desirable part of Federal regulation. To the extent that matters such as safety regulations including hours of work for drivers, weight restrictions and equipment standards fall within provincial jurisdiction there is a fruitful field for co-operative effort by the provinces and the Federal Authority.

The Government of Saskatchewan is naturally anxious that the revenue position of the provinces should be completely protected and is of the opinion that this position need not be affected by the establishment of an over-all transportation Authority.

It is suggested that the application to the Federal Authority and the licensing of the truck operator by the provinces affected would involve, first, an application by the operator to the Federal agency for an "operating authority" permitting him to engage in some particular inter-provincial haul and, second, securing from each of the provinces affected by his run the necessary licenses to travel over their roads. The provinces would not be entitled to deny the licenses provided the trucker complied with all the laws of general application having to do with the securing and holding of such a license.

In summary, the Government of Saskatchewan recommends the establishment of a Canadian Transportation Authority to regulate all major forms of transportation - railways, motor trucks, ships on inland waterways, aircraft and pipelines - with first attention being given to the inclusion of inter-provincial trucking, in a manner fair and equitable to all media and to ensure for the public the choice of agency and the most efficient and cheapest transportation for moving the commerce of the nation.

4. The Government of Saskatchewan recommends the institution of a National Transportation Subsidy.

The Province of Saskatchewan advocates a subsidy as a solution of the difficulties involved in the transportation problem of Canada neither lightly nor from any bias in favour of this type of approach. It is only after an exhaustive examination of all possible alternatives and with great reluctance that the Government of the Province concludes that a national transportation subsidy is the only practicable means by which to ease the intolerable burden of transportation costs on the western provinces and at the same time to ensure the continued efficiency of the Canadian railway system.

Proposals for solving the Canadian transportation problem by modifications within the rate structure appear wholly unrealistic to the Government of Saskatchewan. Deficit subsidies are so fraught with danger that they are entirely unacceptable to this Province.

Adoption of Saskatchewan's proposal would mark no departure from historic national policy. It would, in fact, be a logical step in the further evolution of Canada's transportation policy for which there are both precedents and parallels. The principle of subsidy in aid of transportation is deeply entrenched in national economic policy. Illustrations of this fact have been cited elsewhere in this summation and are discussed extensively in the Saskatchewan submissions.

The Government of Saskatchewan demonstrated in its general submission, and summarized earlier in these pages, the adverse impact of fundamental national policies on the economy of the Prairie Provinces. It was made clear that transportation policy has always constituted a central part of

the complex structure of interdependent policies directed toward national economic development and national unity. It is highly appropriate, therefore, that railways should be used as instruments of national policy for relieving, at least to some extent, the burden of those policies on the western regions in which their effects have been so detrimental.

Despite the growth and increasing pervasiveness of competition, it is clear that the prairie area and prairie economy have, of all parts of Canada, benefited least by its restraining influence. This has meant that the burden of railway transportation costs, more sharply apparent with each successive post-war increase, has borne and will continue to bear most severely on the prairie area. This is not good for the Prairie Provinces, for the railways, or for the industrial areas of Eastern Canada. Saskatchewan strongly contends that resort to the subsidy device to relieve in some measure a situation which is fast becoming intolerable may appropriately be regarded as a national approach to the solution of a national problem.

The Province of Saskatchewan frankly admits that the proper form and extent of a national transportation subsidy are not easy to determine but is convinced of the importance of certain objectives which such a subsidy should be designed to achieve. As stated in the submission of the Province,

"[A national transportation subsidy] should be consistent with established national policy and ameliorate to some extent the unequal impact of such national policy. It should promote the flow of traffic and thereby foster a closer economic relationship between all parts of Canada. It should mitigate to a degree the divisive effect of great distances by absorbing a portion of the transportation costs and blunt, to some extent at least, the sharp edge of any future general increases. It should be applied in such a manner as to avoid discriminating between different regions and thereby be regarded as a truly national subsidy, one from which all parts of Canada may benefit while still achieving one of its main objectives, that of redistributing the burden of transportation costs. It should not be of a nature that would simply result in the Federal Treasury underwriting railway revenue deficits." (Saskatchewan Submission, Part III, pp. 24-5)

The national transportation subsidy which the Government of Saskatchewan proposes might be described as a rate-reduction subsidy. The Province suggests that it could be established through some form or adaptation or extension of the Maritime Freight Rates Act. The necessary legislation might be in the nature of a "Western Freight Rates Act" or

a "Maritimes-Western Freight Rates Act." Under the proposal the subsidy would be made effective as a percentage reduction in freight rates on all traffic moving into, out of and within the four western provinces of Manitoba, Saskatchewan, Alberta and British Columbia. Certain traffic such as that moving on statutory and related rates and on agreed charges together with short haul traffic might have to be exempted for administrative or other reasons. Nevertheless, the goal should be to secure a maximum traffic coverage for the subsidy.

The Government of Saskatchewan commends to the consideration of the Commission the possibility of including the lakehead cities of and districts surrounding Fort William and Port Arthur within the area specified above for the purposes of the application of the rate-reduction subsidy proposed.

The appropriate level of rate reduction under the subsidy legislation could only be determined by careful examination. It may be urged, however, that experience under the Maritimes Freight Rates Act should be useful for purposes of comparison although the Province of Saskatchewan wishes to make it perfectly clear that whatever the percentage reduction decided upon, it should apply uniformly on traffic moving into, out of and within the prescribed area. The Province is not prepared to say whether a thirty percent reduction as provided under the Maritime Freight Rates Act would effect adequate relief from the present high level of rates now paid by shippers. It is proposed that such a rate of reduction as may finally be selected might well be designed to incorporate such insufficient and short term expedients as the "bridge" subsidy.

It is important to keep clearly in mind the purposes of the subsidy proposed by the Province of Saskatchewan. The national transportation subsidy is put forward primarily as a relief to the Western Provinces but in the clear conviction that the railways and the entire national economy would benefit through the stimulus to long-distance traffic movements.

Saskatchewan does not advocate any other form or type of subsidy.

The Government of Saskatchewan submits that it is absolutely essential

that existing procedures governing applications for rate increases be preserved. The Province strongly emphasizes its view that the institution of a national transportation subsidy should not interfere in any way with the operation of the requirements formula or with the responsibility of the railways to justify any and all requests for increases in freight rates when appearing before the regulatory Authority.

The Government of Saskatchewan does not suggest that a national transportation subsidy ought necessarily to be restricted exclusively to rail traffic or rail carriers. Other carriers such as truck operators should not, of course, expect to receive the subsidy automatically as a matter of right but might qualify for it by meeting specific conditions. Truckers, for instance, might establish eligibility under the unified system of transportation control proposed by the Province on condition of compliance with rules and regulations laid down by the Canadian Transportation Authority and the inclusion of inter-provincial trucking within the jurisdiction of that Authority.

While Saskatchewan considers the preservation of the railway system of Canada to be a fundamental national necessity it is not the intention of this Province to sanction railway monopoly or to prejudice the legitimate growth of the trucking industry or of any other medium of transportation. It is a basic assumption underlying Saskatchewan's recommendations, both for a unified pattern of transportation regulation and for a national transportation subsidy, that the various transportation agencies should be treated on a comparable basis to the fullest extent permitted by their physical characteristics and within the limits of administrative feasibility. It is urged that with this principle fairly applied in administering regulatory procedures and in determining the application of subsidy, all branches of the transportation industry should be able to compete successfully and provide the cheapest, most effective and most efficient transportation service to the people of Canada.

The Government of Saskatchewan submits that the adoption of a national transportation subsidy of the type recommended by the Province

would mitigate the divisive effects of great distances and permit transportation again to fulfill its historic role as a unifying influence within the Canadian nation.

All of which is respectfully submitted,


Premier of Saskatchewan.

ROYAL COMMISSION ON TRANSPORTATION

SUMMING UP

OF

PROVINCE OF ALBERTA

February 10, 1961

J. J. FRAWLEY, Q. C.
140 Wellington Street,
Ottawa, Ontario.

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This summing up on behalf of the Province of Alberta will be divided for convenience into the matters which were the subject of the principal submissions made to the Commission on behalf of the Province. They are:

- = Long and Short Haul Discrimination.
- = Regulation of Maximum Rates and the Need for a New Concept of "Just and Reasonable"
- = Horizontal Percentage Increases
- = Passenger Deficit
- = Cost Data
- = Highway Transport
- = Crow's Nest Grain Rates

LONG AND SHORT

HAUL

DISCRIMINATION

LONG AND SHORT HAUL DISCRIMINATION

Alberta's submissions are contained in the papers introduced into the record by Dr. James C. Nelson of Pullman, Washington and Dr. Hu Harries of Edmonton and entitled respectively SOME ECONOMIC EFFECTS OF LIMITATION OF LONG AND SHORT HAUL DISCRIMINATION ON THE INTERMOUNTAIN REGION OF THE UNITED STATES and LONG AND SHORT HAUL DISCRIMINATION.

Dr. Nelson:

Dr. Nelson is Professor of Economics at Washington State University and is a recognized authority in the field of transportation economics. He presented to the Commission a very thorough study of the effects on the Intermountain area of the Fourth Section legislation in the United States.

Section 4 of the Interstate Commerce Act reads as follows:

"(1) It shall be unlawful for any common carrier subject to this part or part III to charge or receive any greater compensation in the aggregate for the transportation of passengers, or of like kind of property, for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, or to charge any greater compensation as a through rate than the aggregate of the intermediate rates subject to the provisions of this part or part III, but this shall not be construed as authorizing any common carrier within the terms of this part or part III to charge or receive as great compensation for a shorter as for a longer distance: Provided, That upon application to the Commission and after investigation, such carrier, in special cases, may be authorized by the Commission to charge less for longer than for shorter distances for the transportation of passengers or property, and the Commission may from time to time prescribe the extent to which such designated carriers may be relieved from the operation of the foregoing provisions of this section, but in exercising the authority conferred upon it in this proviso, the Commission shall not permit the establishment of any charge to or from the more distant point that is not reasonably compensatory for the service performed; and no such authorization shall be granted on account of merely potential water competition not actually in existence: Provided further, That any such carrier or carriers operating over a circuitous line or route may, subject only to the standards of lawfulness set forth in other provisions of this part or part III and without further authorization, meet the charges of such carrier or carriers of the same type operating over a more direct line or route, to or from the competitive points, provided that rates so established over circuitous routes shall not be evidence on the issue of the compensatory character of rates involved in other proceedings: And provided further, That tariffs proposing rates subject to the provisions of this paragraph requiring Commission authorization may be filed when application is made to the Commission under the pro-

visions hereof, and in the event such application is approved, the Commission shall permit such tariffs to become effective upon one day's notice.

(2) Wherever a carrier by railroad shall in competition with a water route or routes reduce the rates on the carriage of any species of freight to or from competitive points it shall not be permitted to increase such rates unless after hearing by the Commission it shall be found that such proposed increase rests upon changed conditions other than the elimination of water competition."

Dr. Nelson carefully examined the legislative and regulatory history of the Fourth Section parity of rates Rule and made a thorough inquiry among business concerns in the intermountain area to determine what the economic effects of the application of the Rule had been in the past, and the influence that it was exerting today. Dr. Nelson's evidence established that the long and short haul discrimination practiced widely by the American railroads on transcontinental traffic before 1918 did have a restrictive influence on the growth of wholesaling, retailing, the service industries and manufacturing at such intermountain locations as Spokane and Salt Lake City. The type of long and short haul discrimination practiced by the American railroads before 1918 is identical to the long and short haul discrimination now practiced at Calgary and Edmonton by the Canadian railways. Dr. Nelson's study showed that after the Fourth Section Rule became law, and the railways were prohibited from charging more to an intermediate point than they charged to a terminal point, there was in the intermountain territory a resumption of growth in population and in the real volume of business activity at intermediate points. It is further shown by the Nelson study that this upward growth in economic activity has continued ever since 1918 except during the depression of the thirties.

Dr. Nelson concluded that the elimination of long and short haul discrimination has been conducive to the development of manufacturing in Spokane. Looking to the future, Dr. Nelson said that except to the extent that Western industry in the United States can depend on expanding Western markets, Spokane and other similarly located intermountain cities will continue to benefit from the established policy of rail rate parity with coastal cities on transcontinental shipments.

Dr. Nelson made one other very important point in his analysis.

He stated as a matter of general and accepted principle that since incremental rail transport costs are lower in the short hauls than on the longer hauls of which the short hauls are a part, the parity relationship that is required in the United States conforms to the economic requirements of allocative efficiency both in railway pricing and in the location of industry and commerce.

It is Alberta's submission that it must be apparent to the Commission that the experience in the United States demonstrates clearly and conclusively that on general economic principles and on the specific grounds of commercial common sense, long and short haul discrimination as it is presently practiced in Canada against Alberta is a very serious detriment and an obvious anomaly that should be removed.

Dr. Harries

The effect of Long and Short Haul discrimination upon Alberta are set out in the submission put in evidence by Dr. Hu Harries, Dean of the Faculty of Commerce, University of Alberta.

Presented on behalf of the Province of Alberta and the many shippers and receivers of railway freight in Alberta who are discriminated against by the absence of a rule governing long and short haul discrimination in Canada, Dr. Harries' brief showed the deleterious economic and commercial effects of long and short haul discrimination. The brief points out that after many, many years the Province of Alberta was successful in obtaining statutory relief from this discrimination by virtue of the passage by Parliament of Section 337 of the Railway Act, following the recommendation of the Royal Commission on Transportation, 1951. A subsequent Royal Commission solely because of the apparent revenue needs of the railways at that time, negated the application of the One and One-Third Rule by permitting Agreed Charges to remain outside the application of the Rule.

Table 1 in Dr. Harries' brief, reproduced in the Transcript at vol. 97, page 16441 illustrates the nature of this rate disability. The

statement shows that there remain many instances in which the rate to Alberta is 25% to 75% higher than the rate to the Pacific Coast from Eastern Canadian origins. As the brief shows, there may have been some reasons for permitting this sort of thing in early years but equity and economics both require that this anomaly be no longer endured.

The Commission is urged to examine the anomalous situation created as a result of the refusal of the second Turgeon Commission to recommend that the One and One-Third Rule apply to Agreed Charges as well as to rates made to meet competition and published as such in the tariffs. An Agreed Charge is a competitive rate in the full sense of the word. The injustice of long and short haul discrimination in the transcontinental rate structure which the first Turgeon Commission recognized and for which it proposed the partial relief contained in the One and One-Third Rule, is equally present in Agreed Charges and is equally deserving of relief. To illustrate: there is an Agreed Charge on anti-knock motor fuel compound (Ethyl fluid) of \$2.67 from Sarnia to refineries at Vancouver. The rate to Alberta refineries at Edmonton and Calgary is \$4.02 and \$4.12 respectively. This discrimination must be suffered simply and only because of the conflict between section 32 of the Transport Act and section 337 of the Railway Act. If the Vancouver rate of \$2.67 were published as a competitive rate rather than as an Agreed Charge, the rate to Calgary and Edmonton would be \$3.56 i.e. \$2.67 plus one-third. To permit the railway to assess an additional charge of \$1.45 to Calgary and \$1.35 to Edmonton for no better reason than that a different tariff procedure has been taken is completely indefensible.

The Canadian National Railways went to the length of asking the Commission to recommend the repeal of section 337 of the Railway Act and of the One and One-Third Rule on the grounds that the Rule "removes managerial discretion". Alberta urges the Commission in the strongest possible way to reject the Canadian National request. The existence of long and short haul discrimination is a matter of serious concern to the people of Alberta. It was with shocked disappointment that the shippers and receivers

of transcontinental traffic in our province learned of the refusal of the second Turgeon Commission to recommend an amendment to the legislation which merely would have restored the intent of the recommendation of the 1951 Commission.

No case has been made out for the repeal of the One and One-Third Rule. It is a rather startling suggestion that there should be "managerial discretion" to impose a rate of \$4.12 from Sarnia to Calgary and a rate of \$4.02 to Edmonton on such an important commodity as gasoline anti-knock compound while at the same time publishing a rate of \$2.67 to Vancouver. On the contrary, Alberta submits that in the light of the review and analysis made by Dr. Harries the Commission should recommend that long and short haul discrimination in the transcontinental freight rate structure be removed — as it was removed 30 years ago in the United States — or at least be restricted by the application of the One and One-Third Rule to all types of transcontinental competitive hauls whether by Agreed Charges or competitive rates published as such.

The railways' argument against giving Alberta relief from long and short haul discrimination is purely and simply a revenue argument. The railways are only able to show that under some circumstances removal of long and short haul discrimination might cause them some loss in revenue. As the Alberta brief points out, this kind of consideration has never been accepted by regulatory tribunals as a reason for permitting discrimination. Long and short haul discrimination is wrong in principle, malicious in practice and without foundation in theory. This Commission should, therefore, recommend its abolition and recommend in its place an outright prohibition against charging more to an intermediate point than is charged to a more distant point except in the obvious cases of railway circuitry.

In conclusion, the attention of the Commission is called to the brief of the Edmonton Chamber of Commerce urging the abolition of long and short haul discrimination from the transcontinental rate structure.

THE REGULATION
OF
MAXIMUM RATES
AND
THE NEED FOR A NEW CONCEPT OF
"JUST AND REASONABLE"
RATES

REGULATION OF MAXIMUM RATES

It is the submission of the Province of Alberta that the twin matters of Regulation of Maximum Rates and the need for a new concept of "Just and Reasonable Rates" transcend in importance all other matters referred to the Commission for investigation and report.

For years and indeed to the present time, the railways have sought to defend high rates by resort to the allegation that the impugned rates were "just and reasonable". A high rate for a particular movement was said to be just and reasonable because the rate on some allegedly comparable commodity carried for the same distance was just and reasonable. These latter rates were just and reasonable, the railways said, because they had the approval, actual or tacit, of the Board of Transport Commissioners. In other words, so it was said, all the rates in the rate structure are just and reasonable unless and until they have been disallowed as unjust and unreasonable.

The inequalities arising out of rates justified by such circularity of reasoning demand relief and the Commission's broad Terms of Reference afford an excellent occasion to attack and solve the problem.

Alberta relies upon the evidence given by three witnesses: the general statement of Dr. Ernest W. Williams, Jr., Professor of Transportation, Graduate School of Business, Columbia University, New York⁽¹⁾ and upon the more particular statements of Dr. Merrill J. Roberts, Professor of Economics, University of Pittsburgh⁽²⁾ and Dr. Hu Harries, Dean of the Faculty of Commerce, University of Alberta⁽³⁾.

I propose to discuss in some detail these allied questions of maximum rate regulation and the "just and reasonable" concept. An examination of the historical background and of the economic principles involved will

(1) Transcript, volumes 101, 102, 103.

(2) Transcript, volumes 103, 104.

(3) Transcript, volumes 97, 98.

serve to make more understandable the recommendations we have placed before the Commission.

Canada is a country of vast territorial expanse which, for political and other reasons, built a railway mileage large in proportion to her population and her developed economic wealth. The desire for competition, moreover, led to considerable near-duplication of main and even of some branch networks. In consequence, traffic density was and has remained low even in comparison with the United States where, according to Dr. Williams, experts judge that from 60,000 to 70,000 miles out of 220,000 miles are now excess. In further consequence, the railways have always worked below the capacity inherent in their permanent way and structures. Since they are by nature a decreasing cost industry whenever operating at less than capacity, an increase in volume toward that capacity would result in lower unit costs.

Recognition of these facts in Canada and in most parts of the world led to rate discrimination as a means of increasing traffic volume, loading the rails better, reducing unit costs and generally stimulating economic development. Rates based upon average costs of a railway which was working well below capacity would attract only a limited volume of traffic, generally traffic of high value capable of standing high tolls. If volume were to be achieved, lower tolls must be employed to encourage the movement of commodities which were less able to bear transportation charges. Since such traffic would be added volume, it would increase the aggregate cost by less than the added volume times previous average unit costs. Hence, lower rates could be made which, if successful in generating volume, would improve net income. And as kinds of traffic movement could be distinguished, it was not necessary for existing rates to be reduced. Discrimination was in order.

But, as Dr. Roberts pointed out, the economic justification for discrimination arises from the lower unit costs anticipated from better loading of the plant in a decreasing cost industry. Without discrimination only traffic capable of bearing average costs of an under-utilized railway

would be able to move. With downward discrimination additional traffic could be caused to move at a profit to the railway and without damage to the shippers of traffic capable of bearing the earlier equal rates, because these latter shippers would continue to bear those rates and no more. They would have the hope, moreover, that reduced unit costs from increased volume would ultimately permit a reduction in their rates as well.

Upward discrimination has an entirely different effect and is without warrant in economics or equity. It results when some traffic is charged higher rates than the level of equal rates which would attract a sustaining volume to the railway. It results, thus, in higher charges for some traffic than if no discrimination were allowed and in a subsidy by this selected traffic of some other traffic taken by the railways at less than the direct cost of handling it. Discrimination is generally frowned upon in economics because of the fact that it produces a misallocation of resources, unnaturally encouraging the favored activities and discouraging those disfavored. It is recognized as having public advantage only in certain limited cases, of which the principal one is that of minimum necessary capital plant whose capacity exceeds demand at equal rates in a decreasing cost industry. But even here limits to the scope of discrimination are required so that the dislocations which result will not exceed the advantages from reduced unit costs arising from utilization of plant closer to its optimum capacity.

The pressure of over-capacity in the face of the opportunity to discriminate led the railways to the classification of freight, a process which was refined and embellished over the years. In addition, low-grade commodities and heavy volume movements were accorded commodity rates which removed them from the classification structure and, on occasion, extended the range of discrimination practiced. Early rate-making policy frequently differentiated the levels of rates with some regard to differing regional conditions and as between main and branch lines in recognition of differences in cost levels. Public policy has forced upon railways much additional discrimination which they would not have resorted to were they left to govern

rate making purely in their own interests. Thus, mileage scales often have been applied uniformly over large areas, equally to light traffic branch lines having high unit costs and to heavy traffic main lines where low unit costs can be achieved. Thus, some traffic is called upon to subsidize other traffic. Further, the pressure to furnish service beyond that which traffic will support has often been most severe in respect of light traffic routes.

In general description of the philosophy of regulated common carriage Dr. Williams quoted as follows from the United States Department of Commerce, Rationale of Federal Transportation Policy, April 1960:

"There are a number of aspects of that philosophy which seem to have escaped general understanding. Railroads had, along with their associated express companies, become common carriers of virtually all commodities known to commerce, in the absence of any suitable substitute services until the twenties. The public had, apart from local cartage and urban transit and a few specialized bulk water carrier services, become almost wholly dependent upon the railroad system for its transportation requirements. It was both natural and appropriate that there should be placed upon the rail carriers the obligation to serve all without discrimination and to do so at reasonable and not unjustly discriminatory rates. Both the railroads in the development of their own policies and the regulatory authorities in accepting and further embellishing those policies, treated the railroads so far as possible as unified systems within broad territories catering to the entire consist of traffic generated by the economy.

"Under the circumstances, so long as the rate level was maintained high enough to permit the earning power needed to keep railroads abreast of the needs of the traffic, great latitude could be used in fixing rates for particular hauls and particular classes of traffic. The costs of handling particular traffic could be and were ignored in considerable degree and, under the conditions, little effort was made to ascertain the costs for particular hauls or services. Measures of operating efficiency which were independent of revenues were used to control operations. And the method of comparison served to enable rates for particular traffic movements to be brought into what appeared to be an equitable relationship to the remainder of the structure of rates. Thus, the making and regulation of rates took on the characteristics of an art, and the principles which were applied were more nearly those of equity than of economics."

Maintenance of this system required that all types of traffic conditions be embraced within a single system which the public was required to use for virtually all its transport requirements — the light density irregular and low-rated flows along with the high density, regular and

high-rated movements. The development of non-rail competitive forms of transport and of the opportunity of the shipper to transport for himself have destroyed this essential condition in very considerable part.

Competitive forms of transport do not attack the structure of rail traffic across the board, but rather in a highly selective manner. Each form of transport has a different economic structure, a different set of cost functions and a different range of service capabilities. Hence each seeks out those areas of rail traffic where, at traditional rates, a profit is to be made by attracting the business away from the rails. All too often this turns out to be high-volume, high-rated traffic on which the railways had hitherto relied for major contributions to their overhead and profit. The less desirable and the losing rail traffic is seldom touched except in those limited circumstances where the newer form of transport has a real economic advantage. Rail carriers operating under a traditional rate structure, modified to be sure by an increasing range of competitive rates, require more than mere volume of traffic. They require also a composition of traffic, a "product mix", which includes enough traffic moving at profitable rates to overcome the losses encountered upon other business which they are forced to carry upon unremunerative terms.

The condition to which they have been reduced is one in which sizable, and perhaps for some period growing, passenger deficits, losses upon certain less-carload and certain carload commodities and other burdens have had to be borne by the profits realized from such carload freight as remains profitable. But this latter is the area of traffic which has been subjected to heavy attack by competitors. Under the pressure of post-war inflation with resulting near disappearance of net revenues railways have felt compelled to seek general rate increases. Such increases tend to extend the range of profitable traffic which competitors can penetrate and would appear to represent, for the long run, a self-defeating process.

The railway retains an economic advantage in respect of a wide range of traffic and by reason of its comprehensive ability to meet a broader

range of traffic requirements than any other form of transport. It must remain the backbone of the transport system especially in a country of great distances where long overland hauls of a wide variety of goods are necessary. But the railway problem is not a simple one and appears to require a multiplicity of approaches for its ultimate solution. Some of the elements are:

- 1) A strong effort to reduce the light traffic mileage and near-duplicate mileage so that available traffic can be handled upon a more compact system at more favorable unit costs,
- 2) A strong effort to reduce the passenger service deficit,
- 3) Careful attention to such other deficit areas, particularly in the freight service, as may exist especially if and where it appears that rail carriers, because of the nature of their rate structure, are handling at a loss traffic which advantageously could be handled by another form of transport,
- 4) Revision of the rate structure to recognize fully that the value of service by rail is increasingly set by the cost of performing service in some other way, with a view to making the rates upon desirable traffic as proof as possible against competition, actual or potential, in all instances where the rails appear to have an economic advantage over other forms of transport.

All of these adjustments will require time, for not only the means must be found but public acceptance secured. While the process is underway the question arises: upon whom should the burden of adjustment fall and upon whom should fall the costs of the time lag in effecting the adjustment? The course of post-war events in the United States was described by Dr. Williams, in admittedly simplified terms, as follows at page 16969 of volume 101:

"Substantial, and until the last few years, growing passenger service deficits, a growing less carload deficit, and the whole burden of generating necessary railroad net income are placed upon the carload shippers of freight. Within this last group, deficit traffic is to be found in every

major commodity group. These deficits also must be borne by the shippers of such carload traffic as remains profitable. Within this last group — traffic in carloads that remains profitable — a growing portion for which competition is active with other forms of transport is becoming steadily less capable of bearing these increasing burdens of deficits in other areas. Hence they fall with accentuated force upon the shippers of traffic which is still rail bound — generally long-haul traffic except of the highest classes, intermediate grade non-bulk traffic which is not yet attractive to trucks and low-grade bulk commodities where a substitute water or pipeline transportation is not available."

The same general course of events is all too familiar in Canada.

Yet the shippers of rail-bound traffic are not uniquely responsible for the adverse events which have assailed the railways. Indeed it is questionable whether they have made any significant contribution to these events — whether, indeed, they, even more than the railways have not been victims.

As Dr. Williams put it at page 16970 of volume 101:

"Under traditional common carrier and public utility approaches it would appear that shippers who are called upon to bear such a shift of burden are entitled to relief. They are, of course, entitled in either country to complain about the reasonableness and lawfulness otherwise of any rate which they are called upon to pay. But this avenue is likely to afford scant comfort. For we have never had any practicable abstract tests of the reasonableness of rates. Nor, if the value of the service be said to measure the upper limit of reasonableness, have we ever had abstract tests of value of service which did not involve us in circular reasoning.

"Instead we pursued a practical method which certainly, at one time, could be justified as roughly equitable. We could judge the reasonableness of aggregate rail income by reference to a revenue requirement or return on investment formula. We could thus resort to comprehensible standards for determining whether rates as a whole were unreasonably high or unreasonably low.

"It has not been a problem which troubles us in the United States in a good many decades because we have not had railroad earning power that hauls on a level that would be judged by two standards prior to public utility as being unreasonably high so we have not had to contend with it very much.

"Given a reasonable aggregate level of income it was possible to judge the individual rates by which that income was produced in relative terms and to seek an equitable apportionment among classes of traffic and varieties of hauls. Classification standards and distance relationships could be brought to bear in establishing equitable relationships among rates. Given a structure that in general was judged reasonable and subject to the further test that no rates within that structure

should be so low as to cast a burden upon other traffic, any rate could be tested to ascertain whether it fell outside the pattern. This was done by the method of rate comparisons. In effect the relative reasonableness of a rate was tested by comparing it with rates on the same or like commodities for similar lengths of haul.

"Competitively compelled rates were always held to be rates which cannot be offered with persuasiveness in comparisons designed to test the maximum level of lawfulness for a rate. Nor would I argue for any other rule. So long as the competitively compelled rate was very much the exception and the great bulk of all rates were at or near the supposed maximum of reasonableness the rule worked well. The condition upon which the logic of the method depended, however, appears to have undergone a rapid rate of destruction. For competitively compelled and statutory rates within Canada appear to have become more nearly the rule than the exception. This conclusion is strongly suggested by the data set forth in the December 27, 1957, Judgment of the Board of Transport Commissioners File No. 43269, at p. 28. As appears from the Board's Annual Report for 1959, p.34, this shows a growth in proportion of total revenues on carload traffic (as derived from sample waybill analysis) for the three categories of traffic at statutory grain rates, traffic at competitive rates and traffic at agreed charges from 23.6 per cent in 1949 to 42.5 per cent in 1956, 47.4 per cent in 1958. In 1959 the percentage was 51.7. This percentage can be calculated from Table I, page 3, Waybill Analysis, 1959, Board of Transport Commissioners.

"Indeed these data break down as follows:

| | <u>1949</u> | <u>1956</u> | <u>1958</u> | <u>1959</u> |
|----------------------|-------------|-------------|-------------|-------------|
| at standard rates | 12.3 | 11.5 | 10.5 | 8.6 |
| at competitive rates | 8.9 | 21.0 | 23.1 | 27.0 |
| at agreed charges | 2.4 | 10.0 | 13.8 | 16.1 |

Thus the increases in percentage of revenues chargeable to traffic not moving at rates useful in comparisons designed to test the maximum of reasonableness has been in the competitive rates and agreed charges.

"Undoubtedly some rates in other categories would also be unavailable as valid components in rate comparisons. The pattern from which departures may be measured by the method of comparisons thus seems to have become steadily less comprehensive. To the extent it has done so, the logic underlying the traditional test has become attenuated. Further development in this direction will of course worsen the situation. As traffic moving under non-statutory and non-competitive rates continues to decline and as the pressures noted force these rates upward in comparison with the total body of rates, the traditional standard affords no check. Apparently individual rates could continue upward within the pattern until they dried up or diverted all traffic."

The development and application of an alternate test of maximum reasonableness admittedly presents difficulty. But mere difficulty ought not

to be a bar to equity for the shippers concerned, nor is some degree of roughness in approach avoidable in matters so complex.

Dr. Roberts demonstrated that, from the cost and waybill data available, a reasonable estimate could be made of the level of equal rates i.e. rates non-discriminatory in the economic sense that would meet the revenue requirements of the railways. This involves a simultaneous estimate of traffic volume that would be generated at equal rates and of the corresponding level of rates which would meet the revenue requirements of the railways. The indications are strong that the system could be maintained at equal rates. However, Alberta does not argue for the application of such a system, but only that the Board of Transport Commissioners should use this method of determining an upper limit upon rates which is sound in economic precept and which would afford relief against excessive tolls which present regulatory practices do not.

Dr. Harries presented another and more simple way of getting at much the same result — a result which corresponds closely to that obtained by Dr. Roberts.

The Board of Transport Commissioners could, with the information actually or prospectively available to it, perform a much more sophisticated analysis along these lines and provide a standard which avoids the circularity and other deficiencies of the present method of rate comparisons.

Before proceeding to a more detailed discussion of the proposals made by Dr. Roberts and Dr. Harries, I would at this point draw the Commission's attention to the following statement of Dr. Williams at pages 16980 to 16982 of vol. 101:

"In the face of present competitive complexities it would appear that carriers ought to be allowed great freedom in the making of rates. They appear to enjoy greater latitude in Canada than has been true in the United States. In a basic public service industry, however, the public is entitled to expect certain things:

"(a) That carriers will put in force or continue in force no rates which lie below the appropriate cost. Where traffic can be retained against competition only at below cost levels, such traffic ought to be shed. For it not only

burdens other rail traffic, but by encouraging the movement of traffic by a method of transport which is less economical than some other, it burdens the economy as a whole. Many commodity classes within the United States include significant volumes of traffic which appear to be moving at below cost levels. In some instances this has resulted from the application of regulation. In other instances it is the result of continuance of precompetitive price practices. In yet others it results from a shift in the cost function, e.g. the increase in terminal costs in relation to line haul, over a period of time which has not been recognized in the rate structure. Railroads will not, except in the short run and for purposes of destroying competition, ordinarily make rates which they believe lie below the cost of service. But rates established close to the level of cost may be allowed, in the absence of continuing review, to fall below a changing cost structure or to fall below the level which changing competitive circumstances require. Where the question is to shed existing traffic which is believed to be handled at less than cost, the relevant measure of cost is, of course, the saving in cost which would be realized if the particular traffic ceased to move by rail.

- "(b) That carriers will, in competitive rate making, fix rates not only above the relevant marginal cost but also at that level above cost which will maximize the contribution to burden from the traffic in the light of the competitive circumstances. This would be anticipated of carriers in their own interest, quite without public intervention. It is noteworthy, however, that carriers in the United States have not yet equipped themselves adequately in market research and in the study of the cost and service characteristics of competitive transportation, so that it appears they are frequently misled, or that they allow rates to become lower than competition requires by default of continuing re-examination, no regular processes for such re-examination having been established.
- "(c) That carriers will, in every instance where they have a cost advantage over competitors, reflect the advantage in the rates so as to maximize contribution.
- "(d) That carriers will, even where forceful competition does not now exist, examine their rate structure carefully to remove any incentive to the growth of competitive service which is not capable of being made more economical than rail service.
- "(e) That a test of the maximum reasonable level of rates be devised and applied as an alternative to the increasingly unserviceable traditional tests, which while expedient at an earlier time, now fail to comport with the economic test upon which the justification for discrimination is based."

That there has been in Canada no attempt to impose limits upon maximum rates has been due to two causes, chiefly. First, there has been an unchallenged acceptance of discrimination in the rate structure, a phenomenon variously described but in Canada generally known as the dominance of the

value of service principle and sometimes referred to as cross-subsidization. As it often has been put: "the boots and shoes must carry the sand and gravel". Secondly, there has been a traditional reliance both by the railways and by the regulatory board upon the traditional "just and reasonable" concept.

Before this Royal Commission Alberta's submission has attacked both of the foregoing concepts. We have put forward the view that there has been excessive discrimination in the rate structure and that, while a certain degree is inevitable, excessive discrimination must be eliminated. We have also put forward the view that the traditional concept of justness and reasonableness is no longer valid, and that today external tests of reasonableness must be found and applied.

Dr. Williams put Alberta's position concisely at p. 16982, vol. 101 in summing up his appreciation of the Canadian freight rate structure and its ills. A test of the maximum reasonable level of rates must be devised and applied, he said, as an alternative to the increasingly unserviceable traditional tests which while expedient at an earlier time now fail to comport with the economic test upon which the justification for discrimination is based.

The problem of the regulation of maximum rates is the core of the statement made by the acting Prime Minister in November 1958 at the time the decision was reached that the distortions in the rate structure again required examination. It is obvious that the unjust manner in which the 17% rate increase had to be applied — 75% of it from 32% of the traffic revenue — was the motivating force in the dual action taken by the federal cabinet:

(1) appropriation of \$20,000,000. for the alleviation of, and only of, the non-competitive traffic i.e. the captive traffic and (2) the intrusting to this Commission the task of finding a solution to the basic problem in our rate structure namely, the disproportionate contributions to the carriers' overhead made by the various segments of the traffic structure.

Because this question is the root of the matter and is what — more than anything else — brought this Commission into being, Alberta is confident that the whole, broad question of discrimination and particularly

excessive discrimination will receive the searching attention of the Commissioners.

In support of the general statement of Dr. Williams, Alberta presented Dr. Harries and Dr. Roberts to discuss this question. I should like now briefly to summarize the evidence of each of these witnesses.

Dr. Harries

Dr. Harries draws upon his wide experience in transportation in Canada and attacks the problem of discriminatory pricing. He complains of the absence of external or objective pricing tests (vol. 97, page 16513) and points out that in the non-competitive area the rate level is determined by the application of an earnings formula which arbitrarily assigns to each type of rate a proportion of the overhead or, more technically described, a proportion of the constant costs. In Dr. Harries' words at page 16512 of vol. 97:

"As competition asserts itself with greater force in all parts of the transportation economy the non-competitive sector assumes an ever increasing proportion of total overhead."
(emphasis supplied)

It is to that problem that Dr. Harries gives his attention and at page 16525 he poses the question:

"What can take the place of competition in determining the price of transportation services in the non-competitive sector of the transportation economy?"

Current pricing policies must be amended to reflect today's changed and changing circumstances. In the competitive rate sector of the structure, competition can and indeed has taken the place of regulation in controlling rates. The non-competitive sector still needs protection but it is precisely that sector which under today's circumstances does not receive it. The pretended protection is the "just and reasonable" concept, the rate-making and rate-controlling mechanism which in the last revenue case before the Transport Board compelled 32% of the traffic revenue to bear 75% of the rate increase needed to provide the railways with funds to meet the bare out-of-pocket expense of a wage increase!

It is Alberta's submission that such lack of protection in the

non-competitive sector of the rate structure cries out for remedy. Dr. Harries has proposed a remedy. Basically, Dr. Harries proposes that because competition will assure just and reasonable rates where competition exists, then where competition does not exist the rates should be related to those applying in the face of competition. In simple self interest, the carriers will not set even rates, /competitive rates, below variable costs. The upper limit — the maximum — for non-competitive rates can be determined by resort to a simple formula, which Dr. Harries feels is best made effective by prescription of statute. The Harries formula for determining maximum rates is essentially a cost plus formula. Competitive rates always return variable costs plus some portion of constant costs, often called some contribution to overhead. Accordingly, Dr. Harries advocates that the upper limit of rates for a given traffic be fixed at the lowest competitive or other rate published for the same or similar traffic plus 40%. The plus percentage selected by Dr. Harries is taken partly from the Ford K. Edwards memorandum (vol. 19) which showed Canadian Pacific constant costs on export grain ranging from 15% to 25% of total costs i.e. variable costs plus constant costs. Partly also the Harries percentage of 40% was taken from "other studies" which have shown that on an overall basis constant costs may be as high as 50% of variable costs. (vol. 97, p. 16527)

Dr. Harries is at pains to point out (p. 16527) that the arbitrary 40% he selected must be

"subject to a rigorous statistical test by ... this Commission or the Board of Transport Commissioners to make certain that it represents a reasonable maximum in line with actual cost experience."

A further reference to Dr. Harries' evidence makes clear the essential characteristics of the formula he proposes. At page 16528 of vol. 97 he says:

"Rates in areas where the alternate means of transport to railway transport were non-existent or poorly developed would be set by the railway at what the railway deemed satisfactory levels subject to the provision that the rates be not higher than 40 per cent above the rates for the same or

similar products in any other area. Such a system of rate making would be essentially cost oriented but would not deny the value of service principle as one factor in rate determination. The pure monopoly element in railway pricing would disappear as in fact it has largely disappeared today."

The Harries brief suggests that there must be a new approach to transportation pricing. In effect, it says that freedom must be granted the carriers to establish their own rates except for some control over the monopolistic elements still remaining in the transportation system. It is proposed to control these monopolistic elements by using, as a standard of reasonableness, the actual rates freely negotiated between shippers and carriers operating in a competitive economy. Dr. Harries suggests that the alternative to the acceptance of this policy is a policy of rigorous control that can only have as its logical result the nationalization of transportation in Canada. He proposes that the railways be free to set freight rates at any level they wish provided that no rate on the same or similar commodity be higher than 140% of the lowest rate applicable for a haul anywhere in Canada.

The proposals made in the Harries brief are workable and economically sound. The practical operation of a system of maximum rates as proposed would not present any especially difficult problems. As has been indicated, most of the rates used by rail shippers would be determined as they are now determined namely, by a process of bargaining between the carrier and the shipper or a group of shippers. The result of these negotiations would establish the general competitive level of rates.

Dr. Harries points out that with his proposed rate making

mechanism in effect, many of the functions that the Board of Transport Commissioners exercises today in respect to the rate structure would disappear. The Board would have one major rate activity namely, determining the justness and reasonableness of a rate by reference to its relation to other rates freely established by the railways to move the same or similar goods in Canada. The Board would act only on complaint and as is the case today with competitive and commodity rates, would not be required to approve rates ordinarily and routinely published by the railways.

The use of "a competitive standard of reasonableness" offers a practical solution for the elimination of regional discrimination in freight rates. The interests of carriers and shippers must surely be the prime concern of this Commission and it is submitted that these can be best served by the freedom contemplated in the Alberta proposal.

I have discussed the Harries formula for the regulation of maximum rates at some length so as to emphasize the invalidity of the Canadian Pacific criticism that the proposal was unsound because the formula was tied to the competitive rate structure. In my analysis of the Harries submission I have endeavored to show that actually and essentially, the formula is cost oriented just as is the proposal made by Dr. Roberts which I now propose to discuss.

Dr. Roberts

The social justification (as the transportation economists call it) for railway discrimination is that it induces larger output and lower average unit costs than would be achieved with uniform prices i.e. if there were no discrimination. But this system also occasions concomitant disadvantages in the non-transport sectors of the economy; it divorces from associated costs the relative rates for services involving different commodities and hauls and thus introduces inefficiencies in the use of resources. Discrimination must therefore be held within rational bounds, not only to prevent excessive and inequitable charges against some shippers, but also to limit the distortions it causes in the economy generally. With the

characteristic circularity of the present comparative test of maximum rate limits, no real standard is provided since each high rate justifies another.

Dr. Roberts argues that the establishment of rational limitations on discrimination requires the employment of an objective and external test that is not plagued with this circularity. Such a test is found in the basic rationale of discrimination which requires that all shippers, including those paying the high rates, benefit along with the railways from this system. To satisfy this requirement all rates, including the high ones, must be less than they would otherwise be. Accordingly, higher than average rates are unjustified if they exceed amounts dictated by the output and unit costs that would be associated with non-discriminatory rates. Under discrimination some rates are above average costs and others are well below. If a system of uniform prices is hypotheticated, the associated traffic volume would be less (since the low rates uniquely stimulate sales) and average cost would be higher than under discrimination. Any rates above this hypothetical level of average costs are the ones to be singled out in the test proposed by Dr. Roberts.

The traffic and revenue effects of a hypothetical system of uniform rates — and therefore the measure of the rate ceiling — depends on the elasticity of demand for rail services and on the array of revenue-cost ratios for specific services or as it is called the pattern of burden distribution. The essential data for making these determinations are presently lacking in Canada, as Dr. Roberts discovered. A rough application of the test to the United States strongly suggests that rates for rather significant traffic volumes exceed the limits that would be imposed by the uniform pricing test. Despite lower traffic density and apparently higher proportions of fixed costs (hence a greater inflation in unit cost from a fall in output) it is unlikely that the legitimate range of discrimination is significantly greater in Canada than in the United States. Employing revenues per car mile adjusted for distance as a measure suggests rather extreme ranges of discrimination in Canada and the application of rates that would probably exceed

the limits imposed by the uniform pricing test.

The evidence given by Dr. Roberts and the tables he used indicate that there is no reason to expect in principle that the revenues derived from "legitimate" discrimination (characterized by profit-maximizing rates below the indicated ceiling) will not fully support the rail system required by the economy. Covering the costs of any historic level of rail plant investment is not the relevant test of rates. Such cost coverage is a qualified goal which is not to be attained if it can only be attained with unreasonable exactions. If the revenues achieved by assessing only reasonable rates (i.e., those which do not violate the ceilings indicated by Dr. Roberts) provide inadequate support for present plant and services, the indicated answer for economic efficiency is contraction and the substitution of other means of transport where necessary. Dr. Roberts' view was that whether plant investment in excess of this level is to be maintained is a political and not an economic decision. If rational ceilings should dictate contraction and if this is politically unpalatable, then in Dr. Roberts' opinion, subsidy support appears to represent the appropriate approach. Through this device the burden is placed on the general economy, which is presumably the beneficiary, and not on a limited group of shippers and consumers.

Dr. Roberts concluded that the development of rational standards for limiting discrimination requires not only sound concepts but adequate data regarding burden distribution and market relationship. It is the responsibility of the regulatory body to develop both the sound concepts and the data required for their implementation. The empirical determinations are difficult at best, but the effort must be made if rail rates are to provide a stimulus rather than a barrier to balanced economic growth in Canada.

Mr. Edsforth made some criticism of Dr. Roberts' evidence. In reply I would direct the attention of the Commission to pages 18147-8 of volume 109 where Mr. Edsforth dealt with Dr. Roberts' complaint that the traditional concept (and indeed the present day concept) of a just and reasonable rate lacked any external test and basically was a piece of circular reasoning.

At page 18147 Mr. Edsforth said under direct examination by Canadian Pacific counsel:

"Q. Now, I come to the one other point in particular that I would like to deal with in regard to these submissions of Dr. Williams and Dr. Roberts and that has to do with the test of reasonableness of an individual rate. Now, first, Mr. Edsforth, how do you test the reasonableness of an individual rate in Canada today?

"A. Well, first, by comparison with other rates on the same commodity in order to maintain a reasonable relationship with other rates.

"Q. Just right there, you have other things that you look at, but right there that was referred to by both Dr. Williams and Dr. Roberts as being, summarizing, really useless because of this what they term circular reasoning. Do you remember that phrasing?

"A. That is right, I remember that. By that I think they mean we just went around in a circle comparing one rate with another and getting back to where we were, but that is not testing a rate in the way I had in mind. What I had in mind was to maintain a reasonable relationship so your structure will not get all out of balance.

"Q. And having done this test to maintain the relationship of rates within the structure do you do anything else?

"A. Oh, yes, you certainly do, because a reasonable rate is one that must at least meet the variable cost of handling the traffic plus something more. That is, as a minimum, and above that it should be at a level which will enable the traffic to move freely and make the maximum net revenue contribution."

Mr. Edsforth confirms what Alberta's consultants say as to circular reasoning. He seeks to "maintain a reasonable relationship" to keep the rate structure in balance. As our witnesses put the same proposition: each high rate justifies another. Mr. Edsforth then emphasized our reliance upon the absence of any external test of a high rate when he explains at p. 18148 that his tests are that the "reasonable" rate (1) must meet variable cost plus something more and (2) will enable the traffic to move freely and (3) will make the maximum net revenue contribution. At page 19638 of vol. 118 under cross examination Mr. Edsforth says:

"Q. I put it to you another way. Both rates, you say both rates — that is, what we might call the suspect rate and the rate being used for comparison — both rates are reasonable, according to your test, so long as they are reasonably related?

"A. No. I said — that is only part of it. I think in my evidence, Mr. Frawley, I gave several things that were a proper test of reasonableness. I said comparison of rates was one, but that is not the only one."

Mr. Edsforth's enumeration of the tests which he would apply to determine reasonableness confirms the position Alberta has taken. Mr. Edsforth says that he would make sure that the rate suspected of being unreasonable (a) was compensatory (b) did not impede the free flow of traffic (c) made the maximum contribution to net revenue. See p. 18147-8 vol. 109. But those tests are tests applied to every rate, even competitive rates and agreed charges. The application of such tests is no answer to the charge that the just and reasonable concept essentially is circular reasoning and is invalid. To illustrate, the rate on farm machinery from the U.S. border to Edmonton or the rate on motor fuel anti-knock compound from Sarnia to Calgary might very well satisfy the tests Mr. Edsforth speaks of, that is to say, they undoubtedly are compensatory, they make the maximum contribution to net revenue and they do not, having in mind the existing pattern of the Canadian economy, impede the free flow of farm machinery or anti-knock compound. But are they just and reasonable? No, because they contain excessive discrimination. The railway answer today is that they are just and reasonable because rates which show comparability of commodity value, loadability etc. are in the same range. That, in Alberta's submission, is circularity of reasoning and must give place to tests more suited to the changed and changing conditions of the freight rate structure. In our submission the search for new tests must lie in the direction of the views expressed by Dr. Williams and the proposals put forward by Dr. Roberts and Dr. Harries.

The Commission has been given two sound formulae to examine: the Roberts' formula — a maximum rate level determined as a percentage over 100 per cent of out-of-pocket cost, such cost to be determined by the regulatory body; and the Harries' formula — a maximum rate level set at 40 per cent (or some other percentage settled after Board cost studies) over

the lowest rate published anywhere in Canada to move the same traffic.

I repeat that in Alberta's respectful view, the matter of the regulation of maximum rates is of prime importance in the deliberations of the Commission. A recommendation for the regulation of maximum rates along the lines we have proposed would carry a three-fold benefit:

1. It would free the rate structure from the dominance of the value of service in rate making while allocating to that principle its proper place.

2. It would remove excessive discrimination or cross-subsidization from the pricing mechanism.

3. It would bring the concept of "the just and reasonable rate" into tune with today's rate structure and in the process would rid rate making of the circularity of reasoning which has characterized and indeed has become the essence of the "just and reasonable" concept.

HORIZONTAL

PERCENTAGE

INCREASES

HORIZONTAL PERCENTAGE INCREASES

Upon no subject committed to the Commission for examination has there been such unanimity of opinion from the witnesses as was evident in the matter of the method of increasing freight rates by the horizontal percentage method. However, while virtually every Province and every organization appearing before the Commission voiced their opposition to horizontal percentage increases, only Manitoba and Alberta put forward any proposals offering specific alternatives to the present procedures.

The position of the railways was simple. It was expressed by Mr. Edsforth at page 18177 of vol. 109:

"Q. Now, Mr. Edsforth, these plans have been put forward as an alternative to the horizontal percentage increase method that you have supported from that same box on other occasions?

"A. That is right.

"Q. Are you wedded to the horizontal percentage increase method?

"A. Not at all. I certainly have not got a closed mind on it and if I could find a method that would do a better job then I would want to adopt it, but I have not seen any yet, and we have examined quite a few, that would do a job as well as the straight percentage increase.

The laissez-faire attitude of the railways leaves a great deal to be desired in the face of the unanimous opposition to the present method of applying authorized rate increases and in the face of the clear direction from the Governor General in Council upon the subject.

Alberta submitted a proposal developed by Dr. Wallace Little of the University of Washington. The basis of the proposal was the undeniable fact that rate increases which result from increases in costs should truly reflect such cost increases. Horizontal percentage increases applied uniformly on long haul rates and on short haul rates completely fail to reflect fairly and justly the cost increases which required the increases in rates.

Dr. Little called attention to the fact that costs not related to length of haul, commonly referred to as terminal costs, have increased in

recent years much more rapidly than costs related to length of haul, commonly referred to as line haul costs. Volume 104, pp. 17451 and following. The witness quoted Interstate Commerce Commission published material which clearly demonstrated the validity of his premise. Alberta makes no apology for the use by its witness of I.C.C. cost data and respectfully reminds the Commission of our attempt — rejected by the Commission — to obtain from the railways Canadian cost data on terminal and line haul costs. It is our submission that the United States data used by Dr. Little safely can be accepted by the Commission when evaluating our proposed substitute procedure for the discredited rate increase procedure now in use.

If line haul costs have not increased as much as terminal costs, then, as Dr. Little observes, the application of a flat percentage rate increase places an undue cost burden on the long distance shipper. It fails to give to the long distance shipper the advantages of actual cost reductions. It forces the long distance shipper to subsidize the short distance shipper. Volume 105, p. 17464. Flat percentage changes tend to destroy the relationship between cost and rates.

As an alternative to the horizontal percentage method of increasing rates, Dr. Little proposes what he describes as the Cost Based Rate Increase Formula. The formula provides a means of increasing rates in such a way as to accurately reflect separately computed increases in costs which are related to length of haul and, increases in costs which are not related to length of haul. Before the formula can be used, there must have been a determination of cost increases — separately computed for line haul and terminal movement — by the Board of Transport Commissioners or by the railways on a basis prescribed by the Board.

There is nothing startling about Dr. Little's proposal. It is essentially, as he said at Vol. 105, p. 17505 in answer to Commission counsel:

"Q. Dr. Little, as I understand the situation, as you have explained here, the whole basis is that rate increases should be applied so as to have those rate increases properly reflect the incidence of cost increases in the terminal and line haul areas?

"A. That is right.

The mechanics of the proposal can be briefly described as follows:

1. Assume an application for an increase in freight rates is before the Board of Transport Commissioners. As information basic to the application, the railways would be required to file data computing the percentage increases in costs related to length of haul and in costs not related to length of haul.
2. The separately computed costs related and not related to length of haul are then related percentage-wise as an increase or a decrease since the date of the last rate increase.
3. For working purposes, to develop the operation of the formula (and because no cost data was made available to us) it is assumed for illustrative purposes that terminal costs have increased 10% and line haul costs have increased 5%.
4. Since terminal costs do not change with length of haul, it was assumed (again, because no cost data was available) that the rate of 62 cents prescribed by the Transport Board on March 1, 1955 as the Class 100 rate for 1 - 20 miles is the terminal cost component of the Class 100 rate for each mileage block. It is emphasized that 62 cents is a purely assumed figure and that the use of the formula is in no way dependent upon the validity of the assumed 62 cents.
5. Subtraction of 62 cents from the Class 100 rate for each mileage block gives the component of the Class 100 rate which may be regarded as the costs related to length of haul. For example, in the 21-25 mileage block, the Class 100 rate being 67 cents and the terminal cost being (assumed) 62 cents, the line haul costs are 67 less 62 or 5 cents.
6. Upon the basic assumption that terminal costs have increased 10% and line haul costs 5%, 62 cents is multiplied by 10% to

give .062 and 5 cents is multiplied by 5% to give .0025 or a total increase of .0645. This gives a new Class 100 rate of 67 + .0645 or .7345. Such an increase expressed percentagewise is 9.63%.

7. Taking as an example the rate in the 176-200 mile block and using the same arithmetic as above, the per cent of increase on the Class 100 rate is 6.69% or, say, 7%.
8. We have now determined a percentage increase for each rate in the Class 100 rates in the manner indicated above. For example, the per cent increase to be applied to a Class 100 rate of \$2.05 is 7%; \$4.25, 6%; \$7.00, 5%, etc.
9. We now have a percentage rate to apply generally to whatever rate, class or commodity, requires an increase. For example, if the rate in question was a special commodity rate of \$7.00, the percentage increase to be applied would be 5%.

So much for the mechanics of the formula proposed by Dr. Little.

Mr. Edsforth criticized Dr. Little's formula on the ground, that it was not realistic to take "a factor for terminals" (vol. 109, p. 18165) and apply it uniformly throughout the scale. However, Dr. Little emphasized throughout his submission that the figure to be used in his formula must be the true terminal cost to be computed by the Transport Board or by the railways with Board approval. At vol. 105, p. 17493, Dr. Little says:

"The basic underlying assumption of the formula is only that the terminal cost figures used should be the true terminal costs for 100 pounds of Class 100 freight." (Emphasis supplied.)

The Commission's attention is drawn to the Interstate Commerce Commission's RAIL CARLOAD COST SCALES BY TERRITORIES AS OF JANUARY 1, 1956 — Statement No. 5-56 — and particularly to page 100 where there appears a statement separately showing costs unrelated to length of haul and costs related to length of haul for the movement of a 30

ton load for various mileages from 50 miles to 1,000 miles. The footnote to the statement says at p. 101:

"The purpose of Appendix C is to indicate the relative importance of the costs unrelated to distance to the total costs for various lengths of haul....."

It is obvious that the I.C.C. Cost Finding Section has been able to satisfy itself that terminal and line haul costs can be adequately segregated. This constitutes an answer to much of Mr. Edsforth's criticism at Vol. 109, pp. 18164 to 18178.

Speaking generally, it is Alberta's submission that in the Commission's determined effort to find an alternative for horizontal percentage increases, the Commission will first examine and evaluate the underlying concept of Dr. Little's proposal, namely, that rate increases should be cost-based, rather than determined, as now, by a method which merely compares required revenue with total revenue and derives a percentage. If our proposal is sound in principle, then the cost finding job of accurately segregating costs related and not related to distance is a piece of statistical analysis which the Transport Board's research staff can be trusted satisfactorily to execute.

Dr. Little's formula assures that rate changes will reflect cost changes. And that is as it should be — in contradistinction to the horizontal percentage method which applies the authorized increase with no regard to the fundamental proposition that the traffic which incurs the cost increases should suffer the rate increases.

If applications for freight rate increases result from increases in wage costs, material costs and the like, it is elementary that the existing rates should be increased with due regard to the nature and extent of the cost increases which require the rate increases. If the costs associated with long hauls have not increased as much proportionately as the costs associated with short hauls, that phenomenon should be reflected in the percentage of increase applied to long haul and short haul rates respectively. The present method of horizontal percentage increases — the same percentage

increase on a 2,000 mile haul as on a 100 mile haul — is patently unjust in the face of the established fact that costs related to long hauls have not increased as much as those related to short hauls.

The present method of rate increase is a further example of discrimination or cross-subsidization which is shot through the entire rate structure. The rate increases on the long haul traffic carry not only their own cost increases but the cost increases associated with short haul traffic. Alberta contends that there must be relief not only from the excessive discrimination in the pricing mechanism itself but in the unjust burden cost-wise which is imposed upon long haul rates by horizontal percentage increases.

If the application of the Little cost based formula would result in diversion of short haul traffic to competitive transport, then subsidy by the taxpayer rather than unfair burden on the long haul shippers of some traffic (as now) is the proper solution.

Alberta respectfully submits that a substitute for horizontal percentage increases must be found. The alternative proposed by Alberta based as it is upon cost considerations should, it is submitted, commend itself to the Commission.

PASSENGER DEFICIT

PASSENGER DEFICIT

The subject of passenger traffic deficits has been of major concern throughout the proceedings.

The railways have taken the general position that the passenger deficit is manageable — in contradistinction to the alleged deficit on the export grain movement — and that no financial aid is requested or desired.

Alberta has taken a quite opposite view. Our position is that a deficit (once proved) is a deficit and no valid distinction can be drawn between a deficit from the statutory rates (if there be such a deficit) and a deficit resulting from unprofitable passenger traffic, unprofitable branch lines, unprofitable less-carload traffic or any other traffic which by reason of its failure to make adequate contribution to costs constitutes a burden on other traffic.

In his discussion with me — vol. 28, pages 4063, 4103 — Mr. Crump pointed to the compulsory character of the Crow's Nest rates and said, speaking of the unprofitable passenger business "but we are not forced to do it". And again at page 4103 he said:

".....Now, those lines have to be continued in the national interest?

"A. I will not say that. I will say at the moment I think there will be sections in Canada where passenger trains will be operated profitably, and that is where the C.P.R. will operate them.

"Q. And in the meantime, though, until that happy day comes — and you cannot point to the calendar when that day is going to come —

"A. Not with definite assurance.

"Q. And until that day comes, you are quite content to have this passenger deficit carried by the rest of the rate structure?

"A. I am not content, but I see no other course."

The evidence of Mr. Emerson minimized the passenger losses and at vol. 109, p. 18264 Mr. Emerson submitted some figures to show that the "passenger train service burden in 1958" was \$15.5 million.

In my submission the calculations set out at page 18264 must be

seriously questioned. First, why seek to determine the passenger train "burden" while in the case of export grain set up fully distributed cost as a "just and reasonable rate" and then endeavor to show how far short of that figure were the 1958 revenues from export grain?

At vol. 74 page 13054 Mr. Mauro discussed Canadian Pacific passenger deficit for 1958 with Dr. Edwards and said:

"MR. MAURO: Mr. Chairman, on that point, just for the information of the Commission, I am reading from the Canadian Pacific Railway Company, Dominion Bureau of Statistics, and 1958 passenger revenue was \$35,677,000; and in exhibit 69 revised the variable cost of passenger service, \$86,303,000. So that there is \$51 million out-of-pocket cost."

Mr. Sinclair disputed Mr. Mauro's calculation but I refer to it now to call attention to the difference between \$51 million and \$15.5 million and to urge the Commission to subject the Canadian Pacific estimate of passenger "burden" in 1958 to severe scrutiny. How can the revenues validly be increased by \$6.7 million, the estimated value of free transportation supplied? How can a cost of money expense using 10.4 per cent be justified in the light of the evidence of Dr. Ulmer and in the absence of public borrowings?

In any event, whatever the amount, the evidence establishes a serious passenger deficit in 1958. The position of Alberta is that the Commission should take such deficit — properly computed — into account when determining the true "deficit" position on all traffics of the Canadian Pacific for 1958. To what extent (if at all) was the handling of export grain unprofitable? To what extent was passenger service unprofitable? To what extent were other traffics unprofitable? Having determined or estimated such an amount in total, the Commission must decide the nature and extent of the financial relief which should be given.

Alberta cannot urge too strongly upon the Commission her objection to the proposition of the Canadian Pacific repeated time after time, that the only problem in the Canadian freight rate structure is the Agreement of 1897 which holds down the rates on export grain. There is just as much

compulsion inherent in the inability to make passenger service pay its way as in the inability to increase export grain rates. The railways are making strenuous efforts to reduce the passenger deficit. Passenger services are being abandoned in some areas and are being curtailed in others. Special pricing schemes have been instituted to increase the attractiveness of rail travel but, regrettably for the railways, with questionable success. At vol. 28, p. 4063 I discussed with Mr. Crump the reduction in fares:

"Q. Your passenger officers are striving to get people to get on the trains and to do that they are reducing the fares rather than increasing?

"A. Well, that reduction was an experiment, an experiment only, to see if people could be attracted back to the rail. It is rather difficult to say at the moment what effect it has had. The month of November was completely distorted by the Grey Cup and, of course, the month of December by holiday traffic. But as I see it at the moment, I don't think that the experiment has been a success."

In this context the Commission is reminded that Exhibit 182 filed by Canadian National shows an operating deficit of \$37.9 million for passenger service in 1959. At vol. 111, p. 18418 there is set out a similar statement showing that for 1958 the operating deficit (passenger) was \$40.8 million.

The Commission has had the benefit of the analyses made and the evidence given upon this subject by Mr. W.B. Saunders, a transportation consultant called by the grain organizations. At vol. 117, p. 19426 Mr. Saunders said this about the Canadian Pacific deficit:

"Including express, dining, buffet and other miscellaneous revenues, the passenger service on the CPR produced \$63 million in 1958. Table VIII - 11 shows the components of the passenger service cost. Total out-of-pocket cost was \$106 million and the out-of-pocket deficit was therefore \$43 million. If constant costs are included, an additional \$32 million must be charged. Thus, the deficit on a full-cost basis is at least \$75 million. Even on the basis of variable operating expenses alone, without any allowance for cost of money or constant costs, the CPR has a passenger service deficit of nearly \$24 million based on the results for the year 1958.

"The deficit under full costs represents the burden on the total earnings of the CPR because passenger service does not pay its pro-rata share of all indirect costs and further that it does not contribute a profit margin to cover the capital costs associated with passenger service."

At the same page the Commission will find Mr. Saunders' comments on the Canadian National deficit:

"A similar study was made for the Canadian National Railway and the results of this study are also shown in Table VIII - 11. Total revenues from the passenger service on the CNR are slightly greater than on the CPR, amounting to some \$66 million. The out-of-pocket costs, however, are much greater on the CNR - \$168 million. Thus, on an out-of-pocket basis, while the CPR has a deficit of about \$43 million, the CNR has a deficit of \$102 million.

"Even if we confine the analysis to expenses and leave out any allowance for cost of money, the deficit amounts to \$69 million on the CNR as compared with \$24 million on the CPR. If constant costs as well as cost of money are included, the CNR passenger deficit reaches the staggering sum of \$180 million in 1958."

I do no more than urge upon the Commission to direct its advisers to arrive at a true basis of calculation of the dollar value of the unprofitability of the Canadian Pacific and Canadian National passenger services.

More important than the determination of the amount of the passenger deficit is the "hands off" attitude of the railways. Both railways have declared the intention of eliminating or curtailing unprofitable passenger services and of using every means of increasing revenues on the lines remaining in service. The extent to which such procedures will result in reducing the deficits now being experienced, is problematic. Until the passenger business is turned from a deficit position into a profit position those losses will contribute to the imbalance in the freight rate structure. This Commission was set up to study that imbalance and to make recommendations for its cure, its complete cure if possible.

The only "outside" assistance suggested by the railways is a proposal that where discontinuance of passenger service is objected to and opposed before the Transport Board and the regulatory body gives effect to such opposition, the opponents should be obligated by statute to guarantee the cost of the continued operation.

In my respectful submission the Commission should long hesitate before making this recommendation. Upon one ground alone, the proposal should be rejected. Presumably, and to be practical, the guarantee of

revenue referred to in proposed section 315A of the Railway Act must come from the local community concerned. Effectively, that means a municipality or a Province. No Province constitutionally has the power to vote public moneys for the operation of a railway, the exclusive legislative jurisdiction over which resides in Parliament. And a municipality is merely the creature of a provincial legislature.

If the abandonment or curtailment of unprofitable passenger operations is refused by the Board of Transport Commissioners the deficit involved should be removed by the grant of a compensating subsidy. Such a situation would be an exact parallel to the case advanced before the Commission by the railways with regard to the movement of grain to export positions. As to the latter, the railways acknowledge that they must continue the service at existing rates but they seek a compensating subsidy from the federal Treasury to bring an allegedly loss traffic into line. Wherein lies any difference between the unprofitable (if and when proved) grain traffic and the admittedly unprofitable passenger traffic? If federal subsidy is warranted in the one instance, it is equally warranted in the other. The distinction which the railways seek to make should be rejected. The railways point to the compulsion of section 328 of the Railway Act. Surely the public preference for motor car and airline transportation which has dried up rail passenger revenues is just as compelling a circumstance as the statutory prohibition against grain rate increases contained in the Railway Act. The railways seek the assistance of the federal Treasury in one instance; they must seek the same assistance in both instances.

Before concluding my remarks on passenger deficit I would like to quote a question and answer during Commissioner Mann's examination of Mr. Emerson at vol. 115, pages 18972 to 18975:

"Q. Yes. You see, Mr. Emerson, the thing that puzzled me, and that was the reason for our rather extensive discussion on this, was simply this: Canadian Pacific makes a sharp distinction between those matters which are within its managerial discretion and those matters which are without its managerial discretion.

"A. I think that is correct.

"Q. That is correct?

"A. Yes, sir.

"Q. For instance, any problems you have with regard to branch lines or passenger services, they are, as you point out, problems that are capable of being dealt with by managerial discretion?

"A. Yes, they are the responsibility of management and management is not asking anyone else to shoulder its responsibility.

"Q. Right, right! But, with regard to the grain rates, this is not a matter for managerial discretion?

"A. Because our hands are tied, yes.

"Q. Right. Now, I must ask you this, and this is what puzzles me. It seems to me, Mr. Emerson, and some of the things you have said to me certainly have not dispelled this belief of mine, that even if your hands were untied — completely untied — with regard to the grain rates, your managerial discretion would not allow you, because of the circumstances that exist, your managerial discretion would not allow you to put those rates on grain moving to export positions to their just and reasonable level?

"A. All at once?

"Q. Within the foreseeable future, without causing undue hardship to the farmers of Canada and without, oh, creating serious economic dislocation for Canadian Pacific, as well as for the western provinces?

"A. Well, all I can say there is that you have to go back in these circumstances and review the history behind the legislation, and the fact that the legislation has, over these many years, acted as a tie, as a hold-down over these rates.

"Q. I understand your position, Mr. Emerson. I am just having a little difficulty with reconciling the approach to all other matters, which is a straight economic approach, without too much regard for historical circumstances, sociological or political factors, with regard to the balance of the rate structure, and then having too, in a sense, shift my thinking with regard to the grain rates and inject into those considerations other than straight economic considerations which you have put on the balance of rate structure. This is my fundamental difficulty. It is a philosophical difficulty, if you wish.

"A. Well, I think, if I may say so, that the difficulty — whatever it is — arises from, as I have said before, the long period of time over which these rates have been fixed at a statutory level.

"Let me go back in another way. If the statute of 1923 had been repealed two years later, or three years later, the problem would have been relatively small. But, with the efflux of time and with the marked increase in costs that has

taken place over that period, this problem builds up. Now, that is not of our making.

"Q. No, I certainly did not want you to think that I ever thought it was of your making. This is one of those things that we have learned to live with in this country up to now.

"You see, if I am right, Mr. Emerson, and I am not sure that I am, then the distinction that your company makes in its submission to us — the distinction between fields that are susceptible to managerial action, and the field that is not is, as of today and within the foreseeable future, a strictly theoretical thing. It means nothing, because the result is the same. You could not move with regard to the grain rates if you treated them the same as the rest of the rate structure, and therefore it does not really matter whether you can exercise managerial discretion or not, because surely the exercise of managerial discretion must mean that I can do something about something. If I cannot do something about something, I have got the right to do it, but it is a meaningless right. I cannot put it into effect.

"A. Well, perhaps in another analogy you might say that over the years the muscles of the railway in respect to the statutory rates have become atrophied to some extent because they have not been allowed to function. Now, that, I think, is a disability, of course, which has flowed from the legislation itself."

I draw this passage to the Commission's attention for two reasons. When Mr. Emerson states that problems (presumably the reference is to unprofitability) with regard to branch lines or passenger services are "the responsibility of management and management is not asking anyone to shoulder its responsibility" the users of the railway's freight services must take issue with him. What is the difference in the annual minus dollars position which results from the operation of the passenger services (in spite of the best efforts of the railways to abandon and curtail) and the minus dollar position which results (if it results at all) from the movement of grain at statutory rates? None, in my submission. Does the mere act that one traffic is put beyond remedy by Parliament and another traffic is put beyond remedy by public preference for other modes of transport justify the distinction which the railways seek to make? Is it not just an empty phrase for the railways to say that branch lines and passenger services are manageable in the face of the progressively unprofitable history of those services? Without the slightest wish to be facetious, it could be said more precisely that some branch lines and passenger services have become

unmanageable as the result of growing competition from and public acceptance of other forms of transport.

In sum, whether manageable or unmanageable, deficit traffics — all of them — must be scrutinized by the Commission as part of the general rail transport problem and not examined and dealt with in separate compartments as the railways would have it. If the Commission is to recommend assistance from the federal Treasury, that assistance should not be ear-marked as applying to any particular segment of the railways' business but must, in Alberta's submission, be designated as relief for unprofitable operations generally. No other recommendation would be fair and equitable to the regional users of rail service throughout Canada.

My further reason for referring to Commissioner Mann's exchange with the Canadian Pacific vice-president is that questions and answers underline the inconsistency of the Canadian Pacific's position in asserting that there is a valid difference between statutory restriction over export grain rates and managerial freedom over rates other than export grain. As Commissioner Mann's questions make clear, Canadian Pacific's managerial freedom over grain rates — if the statutory ban was removed — would be a meaningless freedom in the face of the hard, economic facts surrounding grain production and marketing. Rates could not be increased. Indeed, it is because the railways realize that fact (and they openly assert it) that they urge an increase in grain rate revenue through a federal subsidy. Similarly, hard economic facts albeit of a different kind prevent the profitable operation of passenger services and branch lines. Is not the railway position patently inconsistent and untenable? If Canadian Pacific is moving export grain at a loss, that loss is being borne by Canadian Pacific's other traffics not by the corporation. That is evident from the fact that railway earnings in 1959 were \$36,046,293 net, i.e. after income taxes.

But Canadian Pacific takes two opposing positions with regard to the allegedly loss grain traffic and the admittedly loss passenger traffic. As to the loss grain traffic, a subsidy is sought; as to the loss passenger

traffic, the rest of the rate structure must carry it and continue to carry it because, as Mr. Crump says at page 4104, he sees "no other course".

To repeat and to conclude, it is the submission of Alberta that if the Commission finds the railways in need of financial assistance, that assistance must not be labelled "Crow's Nest grain rates". It must be allocated to the over-all operations as compensation respecting (1) traffics which are found to be loss traffics and (2) traffics which, while not deficit in the sense of failing to return variable cost, nevertheless fail to make proportionately adequate contribution to overhead.

COST DATA

COST DATA

More than once during the hearings, the question of Cost Data was raised. Some of the Provinces raised it squarely in January 1960 when we moved for an order of the Commission directing the railways to furnish the Commission and interested parties with cost data which had been requested by consultants who had been retained by some of the Provinces to examine and report concerning such matters as:

- = the regulation of maximum rates
- = the present day validity of the concept of "just and reasonable" in the evaluation of rates
- = the contribution to "overhead" made by various classes of rates and various components of the rate structure
- = horizontal percentage increases

The railways opposed the application for the cost data and the Commission refused to order it. We were compelled to choose between abandoning entirely the examination of the subjects -- some of which are listed above -- or instructing the consultants to prepare their submissions without benefit of Canadian cost data, using similar data available in Interstate Commerce Commission publications. Alberta chose to follow the latter course.

Alberta would like in her summing-up to make her position perfectly clear. The Commission's refusal to direct that the requested cost data be furnished to us, is now a concluded matter. The data was not supplied. The representations of the Province have been completed. What is of continuing importance, however, is the entire question of the validity or invalidity of the proposition that the Canadian regulatory body today should be in possession of more and better information concerning the cost of traffic movements.

Upon one ground alone the availability of such cost data is required. No observer of the Commission's work could fail to see and to be impressed by the emergence of the fundamental fact that today there is

a need — virtually an undenied need — for more cost orientation in the making of freight rates. Unless the Commission were to reject out of hand the submissions of Dr. Hughes for British Columbia, of Dr. Williams for Manitoba and Alberta and of Dr. Roberts and Dr. Harries for Alberta, there can be no escape, in my submission, from a finding by the Commission that the serious lack amounting indeed to a total absence of cost data in Canada must not continue.

I repeat, if the Commission gives its benediction to the "status quo" argument of the railways, then the continued absence of cost data will follow as a matter of course. No one, neither Board nor shippers knows as a matter of routine filed information what it costs to move class-rated traffic either in total or in specific movements. And so it is with traffic moving at commodity rates, at competitive rates or on Agreed Charges.

The Waybill Study given a considerable range of information as to revenue but nothing at all concerning costs. To the important questions: What traffic is highly profitable, what traffic moderately profitable, what traffic is marginal? there is and can be no answer in Canada today.

It is my submission that during the thirteen years of post-war increases, there has been a growing justification for the need to have available cost information which would inform the shippers and the general public concerning the burden which the horizontal percentage increases have imposed almost annually during those years. A simple calculation tells us what percentage of the traffic revenue has carried what percentage of each of the ten increases now totalling 157% over 1948. But we have no answers to the important question: What class of rates, class, commodity, competitive or agreed charge is furnishing the surplus over variable or out of pocket costs to supply the moneys required to pay fixed charges, and dividends and broadly speaking to keep the railways whole.

It is my further submission that, whatever justification the railways may have had in the past for refusing any data that would establish the respective traffic contributions to overhead (or to "burden" as it is called in

the I.C.C.) no justification can continue now. The railways have been most anxious — to serve their own case — to place before this Commission and the shippers, their estimates of the deficit position of grain moving to export positions. In view of the full disclosure of the costs of moving grain the railways cannot now be heard to refuse to supply cost data in such a manner and to such extent as will permit the publication by the Board of Transport Commissioners of material similar to DISTRIBUTION OF THE RAIL REVENUE CONTRIBUTION BY COMMODITY GROUPS and RAIL CARLOAD COST SCALES BY TERRITORIES.

Dr. Ernest W. Williams, Jr. of Columbia University, a widely known transportation economist whose views have been heard and respected by the Board of Transport Commissioners was asked his opinion concerning the need in Canada of material similar to the I.C.C. cost statements referred to above. Dr. Williams had this to say at Vol. 101, pp. 16989 to 17000:

"Q. Dr. Williams, I want to ask your view with regard to a matter. I show you a document — just the cover of it — and it is Statement No. 5-59 of the Interstate Commerce Commission. It is called Rail Carload Cost Scales by Territories for the year 1958.

"Then, I show you another document called Distribution of the Rail Revenue Contribution by Commodity Groups; this one happens to be 1956; it is numbered as Statement No. 6-58, and it is dated Washington, November 1958, and I would like to ask your opinion as to the usefulness of the preparation of those statements in Canada and your views with respect to the advisability of whether you feel this Commission should make any recommendation with regard to the introduction of that kind of cost information.

"COMMISSIONER MANN: Dr. Williams, your general answer to such a question, if it were given, would follow, would it, along the lines of what you state under Cost Finding in Federal Transportation Policy⁽¹⁾ at pages 9 and 19?

"THE WITNESS: Very much so, I suspect, since we had quite an examination of this problem made at the time of that study.

"THE WITNESS: Well, it is a question which probably calls for a rather complicated answer. I think it will be obvious to the Commission that any recommendations that ran in

(1) Federal Transportation Policy and Program - United States Department of Commerce, March 1960 - Ernest W. Williams, Jr., Director of Study Staff.

the direction suggested, that the cost of the service has become, and must by the nature of economic circumstances become, a more important test of successful rate making in the present competitive era, and will certainly suggest that some kind of cost finding procedures become essential. They are, in the first instance, essential to the carriers themselves, and this is a thing which our own railroads were quite reluctant to recognize because the rail cost finding problem is certainly one of the most difficult cost finding problems that can be presented in the whole field of economics. Moreover, it was not a thing traditionally necessary nor a thing the carriers were naturally prepared to come forward with. But certainly it is becoming recognized by our railroads and increasingly, I think, by shippers who are called upon to negotiate rates with carriers, as well as to contest rates in regulatory proceedings, that cost tests have become increasingly important. They have certainly with us become especially important in the matter of trying to determine in the regulatory process how low a carrier of any kind — not just railways but other forms who may be in competition with one another — ought to be permitted as a matter of public policy to go in making rates. When you come down to it, the question that the regulators ask increasingly, especially since the amendment of 1958, is the question that railroads certainly ought to be and presumably are asking of themselves, and that is the question whether the rate reduction proposed will be beneficial to the net income of the carrier. That involves not only, obviously, a determination of what the cost of the service will be, but also an estimation of what the volume of the traffic will be, because unfortunately the behaviour of cost is related to the matter of volume. We have, as you all know, and as this document which Mr. Frawley has put before me indicates, for a number of years had published by the Interstate Commerce Commission a publication called Rail Carload Cost Scales by Territories. This document has become increasingly to be used in the United States. I am not able to speak of that entirely in a favourable sense, however. We notice, for example, in the report to which Mr. Commissioner Mann has referred that cost finding procedures in respect of all forms of transportation in the United States are certainly not as well advanced as would be desirable.

"We have heard the results of the application of a form which essentially was developed by the Interstate Commerce Commission in the class rate 39 proceedings Docket 28300 and 28310. Their problem at that time was a problem very similar to the one you had in the Equalization case. That is a problem of alleged territorial discrimination in rates, a matter that was really, in controversy, whether it was notably more expensive to transport freight by rail to Southern territory than in the Western territory than in official territory. For that kind of a purpose territorial approaches were reasonable, appropriate and, in the end, the cost finding study — the first of the sort done on that comprehensive basis by the Interstate Commerce Commission — suggested that the differences, although there were some, in the average levels in the several territories were not significant enough to justify differences in the scales of class rates that ought to be prescribed.

"Now, these data, the formula itself, has been carried forward. These data are annually put out by the Commission. And, in default of anything else generally available and reasonably

recognized officially so that it does not have to be defended everytime it is put in the record in a proceeding, we have come to use it for a great many purposes that get awfully far from the intended purpose. We are inclined to use it for a great variety of rate cases for which there is involved perhaps a rate on a single commodity between a few areas in Canada with which average territorial costs do not prove very helpful. If they shed any light, it is probably accidentally rather than otherwise.

"There are, of course, methods by which these costs can be adjusted in some degree. The Commission itself provides a suggestion as to a number of adjustments that can be made in the covering material which goes along with the carload cost scales. Some of the major causes for differences in the costs of particular hauls — what you might call departures from the average of territorial experience — can be allowed for roughly and, of course, the formula can be employed for special cost studies reflecting the costs on a particular railroad or group of railroads and adjusted to reflect not average but actual costs in particular terminal situations and the like. It certainly cannot be described as, at this stage in the game, in any sense a perfect tool. As a matter of fact, I am a little disturbed by the extent to which we have come to accept it and use it without a recognition of the qualifications that were put around it by the Commission's own cost section itself in explaining what had here been done, and what these results were.

"Nevertheless, if one uses it with a proper recognition of its limitations, then it can become a useful instrument; and we are in the unhappy situation of not having any other. I have been of the opinion, and we recommended in the Department of Commerce study, that a great deal more work ought to be done on this in view of the fact that our rail carriers are increasingly recognizing — and some of our motor carriers likewise — the fact that they must have, if they are to do a rate-making job intelligently, better cost information than they now have. Quite a little work is going forward in some of our carriers in that direction to improve what we now have before us.

"In the meanwhile, this set of carload cost scales certainly has usefulness, if it is properly interpreted and properly applied. My concern about it is more often that it will not be properly interpreted or properly applied. It has gotten to the point, however, where it is used as the basis for screening proposed reduced rates in the Commission's Suspension Board. It is used as a way of separating, you might say, the sheep from the goats as to whether there is a rate that is apparently a satisfactorily compensatory rate or a rate as to which there might be some question as to its compensatory character.

"It is an important test in determining whether the rates ought to be suspended or they ought not to be suspended. It is a thing that has caused a good deal of grief to carriers' competition with the railroads, and has been complained about considerably.

"I would say, though, that the out of pocket cost formula that is used by the Commission is conservative enough so that unless you have quite exceptional cases present it can

provide such a rough test ... certainly not a conclusive test in the case of a close kind of an issue that involves important competitive interests.

"It does, of course, enable a good bit of broad study to be made. This kind of thing is translated into the second document which deals with the question of the distribution of rail revenue direction. The one depends on the other. The cost finding procedures are necessary to produce the cost element which enables the burden distribution to be shown.

"Now, this enables us to see in a rough way, and subject to the conditions that have to attach to the cost studies themselves, what the apparent position of various commodity groups is. It serves, certainly, as a kind of a screening device. It is not, at its present state, I think, sufficiently acute as an analytical tool to enable us to deal with close cases without going further, but I think it has been in our case in the regulatory side and to shippers and carriers alike a very useful approach as a rough approximation, and it cannot purport to do much more than that, unless you supplement it with some additional studies and you supplement it with some adjustments from the scale costs as shown in this publication.

"We would be hard put to go forward in applying the principles that we are now trying to apply largely on the railroads own initiative, however, if we did not have some basis for considering in regulatory procedures the level of railway costs and things — some basis for using them in the suspension process — as a rather automatic matter.

"My hope is that we will not misuse them and we will develop more perfect instruments because the present problem, after all, is not a problem of pricing average traffic; it is a problem of pricing how traffic movements in which one certainly will expect that in a great many cases the cost of movement will depart, and perhaps depart significantly, from what are shown as average territorial costs.

"That is certainly a long answer, and I do not know for certain whether it was responsive to the question."

In my respectful submission, the findings and recommendations of the Commission upon the subject of Cost Data should be such as to assure that in future the Transport Board and the shipping public be put in possession of cost information which will clearly establish the pattern of the relationship between costs and rates.

Alberta has directed its submissions to the vital question of excessive discrimination in the rate structure resulting from the pricing policies practiced today by the railways. Excessive discrimination and the allied problem of value of service versus cost of service must and will, I am confident, receive the Commission's most careful consideration. No remedial

steps whatever in that direction can be taken unless cost data is available. That is a sine qua non to the success of any procedures designed to remove distortion in the form of excessive discrimination and excessive cross-subsidization from today's rate structure.

The Terms of Reference were drafted following the appeal to the Governor General in Council in the 17% increase case. As I have argued throughout these proceedings, the distortions in the rate structure strikingly set out in railway exhibits 58-14 and 58-22 in that case (75% of the increase being sought from 32% of the traffic revenue) motivated in large degree the action of the Government in setting up the Commission.

Elimination of the distortions to which I have referred must and will receive the best attention of the Commission. The railways acknowledge but one distortion — the Crow's Nest grain rates — and in an attempt to show the unprofitability of those rates, much cost data has been furnished. Furthermore, under the railways' proposals, the Board of Transport Commissioners will be kept continuously informed of the relationship between revenues and costs in the export grain traffic.

There cannot be one law for the railway and another law for the shippers. The railways cannot be permitted to select one traffic as to which they will supply full and complete cost data. Cost data must be available concerning all traffic. If cost data is to be filed to show the revenue-cost relationship in the export grain traffic because the railways desire to show the continuing unprofitability of such traffic, then the shipper or receiver of any traffic should have available to him the tools required to show the excessive discrimination inherent in the freight rates he pays, and to show the extent to which his traffic is used to cross-subsidize other traffic carried at low rates either because of competition or because of the physical characteristics of such traffic. To repeat, the shipper and the railways must be equal before the law. If the railway is entitled to invoke cost data to establish an undue degree of unprofitability in one traffic, the shipper is equally entitled to invoke cost data to establish an undue degree of profit-

ability in one traffic, the shipper is equally entitled to invoke cost data to establish an undue degree of profitability in another traffic.

There is the same validity in the shipper's claim that the revenue-cost relationship of his traffic shows excessive discrimination and disproportionate contribution to overhead as there is in the railway's claim that a certain traffic is unprofitable. It is indefensible to argue that cost data will be available to support the railway's case but that it will be denied to the shipper to support his case.

I leave the question of cost data with the earnest plea that the Commission recommend that information respecting costs — at least in the form supplied to the Interstate Commerce Commission — be supplied in Canada to the Board of Transport Commissioners. Failing such procedure it is my respectful submission that there will be no amelioration of any consequence in the injustices inherent today in the freight rate structure. There will be no progress toward the regulation of maximum rates. The distortions which are now the distinguishing characteristic of the rate structure will remain. The evil for which the Commission was asked to recommend a cure will remain an evil. Value of service will control the transportation pricing mechanism as it does today. Excessive discrimination and cross-subsidization will continue to cause distortions in the rate structure with concomitant injustice to shippers in many parts of the country.

If the Commission finds that the railway operation in Canada today is such — from whatever and what variety of causes — that assistance from the federal Treasury is required, then hand in hand with such a recommendation must go, in my submission, a recommendation for the setting up of machinery for the furnishing and recording of cost data to the end that from this time on, revenue-cost relationship in any and every traffic will be part and parcel of the Canadian railway economy.

HIGHWAY TRANSPORT

HIGHWAY TRANSPORT

In Alberta's submission, the Commission should make no recommendation for any change in the existing pattern of the control and regulation of highway transport.

It is true that there has been a decision of the Privy Council that the regulation of interprovincial trucking — and even the intra-provincial operations of an interprovincial trucking enterprise — falls within the legislative jurisdiction of Parliament. The Commission is aware, however, that following the decision in the WINNER case, the Government of Canada convened a federal-provincial conference to discuss the situation and as a result there was enacted by Parliament the Motor Vehicle Transport Act, Chapter 59, Statutes of Canada 1953-54. That Act, operative only in those provinces which have requested its proclamation, constitutes the provincial highway traffic board to be a federal board for the purposes of the control and regulation of interprovincial trucking into or through the province.

In Alberta's submission, there has been no case made out for the setting up of a federal Motor Carrier Board with powers of the sort exercised by the Board of Transport Commissioners over federal railways. Neither has a case been made out for the setting up of joint interprovincial boards with members appointed by two or more provinces. In our opinion, such boards would be no improvement over provincial boards exercising the powers conferred by the Motor Vehicle Transport Act.

Alberta advocates a virile trucking industry and our record in that regard speaks for itself. We have a healthy trucking industry in Alberta, both the operations which serve the province internally and the operations which connect Alberta with the other provinces, East and West.

It is my earnest submission that if the Commission proposes any change in the existing situation regarding regulation and control of interprovincial trucking, it should be an integral part of any such submission that the Provinces must first consent to any such change.

CROW'S NEXT GRAIN RATES

CROW'S NEST GRAIN RATES

It is paradoxical that the Commission has been compelled to give so much of its time to a consideration of the rates for the movement of grain to export positions in Western Canada. Paradoxical because no mention of the rates is to be found in the Terms of Reference.

However, the railways at their own beseeching have had their "day in Court" — their many weeks in Court to be exact — and the Commission is faced with a voluminous record upon the question of the much maligned export grain rates.

In lieu of any recital here of the history of the rates and their place in the agricultural economy of Western Canada, I commend to the Commission the excellent statements made by the Honourable J.E. Brownlee, Q. C., President of United Grain Growers Ltd., and former Premier of Alberta, and Dr. George E. Britnell, Professor of Political Economy at the University of Saskatchewan. No more knowledgeable persons could have been found to state not only the case for the grain producer immediately concerned, but the case for all of Canada lying between the Lakes and the Mountains where the economy is predominately agriculture and agriculture is predominantly grain growing for export.

If the evidence of Mr. Brownlee and Dr. Britnell could be compressed into a single sentence, it would be: It is not admitted that the export grain traffic is a deficit traffic but, if it is, it differs not from other deficit traffics and if by reason of such deficits State assistance is sought, under no circumstances should that assistance be labelled "Crow's Nest grain". To that view, Alberta heartily subscribes.

As I have argued in other parts of this summing-up, a deficit is a deficit whether deriving from unprofitable passenger services, unprofit-

able branch line operations or unprofitable segments of the traffic structure whatever they may be. Alberta asks the Commission to reject as a delusion the proposition that passenger deficits are manageable but "Crow" deficits are beyond management. Let the record speak for itself. How can the railways regard the future of passenger services (eliminate and curtail them as they may) with anything but despair in the light of the enormous capital investments being made by Trans-Canada Air Lines and Canadian Pacific Air Lines to transfer the traveller from the railway to the airway?

The studied attitude of the railways before the Commission is that there is but one injustice in the freight rate structure — the Crow's Next rates. Alberta unreservedly challenges that position and submits with confidence that the contrary has been proved many times over during the long months of the enquiry.

The railways presented elaborate studies in an attempt to show that the revenues from export grain in 1958 fell below variable (out of pocket) costs. Then, the proposition was put forward that export grain would return adequate revenue to the railway only if it paid full cost, that is to say 100 per cent of variable cost plus 100 per cent of constant cost (overhead). The grain organizations of Western Canada and the Provinces of Manitoba and Alberta challenged the railways' case on all counts. The grain organizations' consultant, Mr. Saunders, presented in evidence a thorough and far-reaching analysis of the Canadian railway problem and the several deficit traffic areas. The witness made a searching and compelling criticism of the costing techniques used in arriving at the grain deficit of \$70,000,000. in 1958 (both railways).

Manitoba and Alberta jointly presented Dr. Borts, Dr. Ulmer and Mr. Banks and placed before the Commission a counter cost analysis which pointed out the imperfections in the railway studies and offered their own estimate of the cost of the movement.

It is an ancient and valid maxim of the law that he who asserts

must prove. The railways have failed to prove their assertions. The position of Alberta is that the railway cost analysis (chiefly that of the Canadian Pacific because time and circumstance did not permit a study of both analyses) cannot be accepted by the Commission. I should like to discuss the matter.

Railway cost finding is perhaps the least advanced of all the branches of industrial cost accounting. Despite the infantile state of this art, the Canadian Pacific and Canadian National have taken and adhered to the position that they have found THE cost of handling grain to export positions. THE cost, as ascertained by the railways, and which brooks of no challenge, exceeded revenues from traffic moving at statutory rates by a magnitude alleged to approximate \$70 million in 1958, a burden almost equally divided between the two railways.

Thanks largely to the efforts of Manitoba and Alberta, THE cost, assumed by the railways as an absolute quantity, immutable as the Rock of Gibraltar, has been disclosed as a misleading illusion, an occurrence of the ignis fatuus of the ancients, designed by the railways to lend a scientific coloration to what can at best be termed an educated — if misguided — guess.

No matter how considered — in whole or part — there is no such thing as THE cost of moving export grain. If THE Canadian Pacific cost was \$70.7 million prior to Exhibit 132, how can it become \$71.7 million thereafter and still remain THE cost? If THE cost to the Canadian National is \$60 million, how can the mere filing of some revised pages transmute THE cost to \$63.9 million?

THE cost can only be determined with precision when and if ways are found to measure beyond peradventure of chance a multitude of occurrences during thousands of days at tens of thousands of locations all over Canada. The happy day when this can be accomplished lies in the far future — and until it arrives any suggestion that THE cost has been or can be measured is a presumption which this Commission should summarily reject.

In lieu of THE cost, the railways have presented to this Commission cost ESTIMATES, which are merely chains of computations shrewdly contrived to reach preconceived conclusions.

The weaknesses in such estimates have become glaringly apparent through the studies conducted on behalf of Manitoba and Alberta, which reveal the following frailties in the railway cost presentations:

1. The Railway cost estimates fail to reflect universally applicable laws of railway technology and operations, in that the estimates
 - a) ignore the fact that grain is a heavier loading commodity than most other traffic — a fact which induces handling and movement economies absent from the railway estimates, and causes these to be overstated, particularly with respect to train-miles and track maintenance expense.
 - b) ignore the fact that grain is a commodity moving in heavier volume than any other traffic — a fact which induces handling and movement economies absent from the railway estimates, and causes these to be overstated, particularly with respect to switching costs (multiple car cuts and decreased work requirements at intermediate yards).
 - c) slight (in the case of the Canadian National) or neglect altogether (in the case of the Canadian Pacific) the substantial impact of geography upon railway operations, being based instead upon the fallacious proposition that costs unrelated to traffic must either be related to track-miles, or remain unexplained apart from the mere existence of the railway. This cavalier dismissal of an obvious cost determinant defies the great body of railway engineering experience and contradicts railway testimony in the Mountain Differential Case.
 - d) altogether overlook the substantial variation in cost

characteristics of diesel units by contrast with locomotives, and thereby cast substantial doubt upon the validity of the costs they attribute to or associate with locomotives.

e) impute a substantial element of variable cost to the grain traffic upon the assumption that freight car purchases are directly responsive to traffic fluctuations - an assumption, which flies in the face of historical fact.

2. Railway cost estimates are developed from an accounting system designed for other purposes and poorly suited to the objective of cost determination.

The railways have been so mesmerized by what they deem to be a sophisticated employment of multiple regression techniques for identification of cost variations with service and size units that they have misapprehended the significance of this method and confused its use with the attainment of meaningful answers. In so doing the railways have failed to comprehend that incorrect application of sophisticated techniques may yield results as wide of the mark as those attainable by more elementary methods. A fascination with multiple regression for its own sake is characteristic of the railways' cost development; this should not be allowed to obscure the fact that this device is only an inadequate substitute for the disclosure of cause and effect relationships clearly and simply disclosed by accounting systems properly constructed to disclose cost information. Enamoured of multiple regression the railways have made a virtue of necessity; in fact the truth remains as elusive as ever.

3. Railway cost estimates rely heavily upon arbitrary statistical mechanics.

In assessing many important areas of joint and common costs characteristic of the grain movement, the railways

have used arbitrary statistical methods and thereby produced questionable results. Their estimates of train-miles; car-days; freight car repairs, depreciation and investment; traffic, general and tax expense, among others, rest upon assumptions subject to challenge in many particulars. Their total estimates are correspondingly impaired.

4. Railway cost estimates utilize an invalid medium to measure investment factors.

A major inflation inherent in the railway cost estimates is their use of a "cost of money" factor which (a) has failed to gain acceptance by the Board of Transport Commissioners; (b) assumes that the railways must go into the money market hat in hand in order to meet their capital requirements; and (c) neglects the 40 year pattern of internal capital generation characteristic of the Canadian rail carriers.

Alberta relies upon the convincing statement of Dr. Ulmer (vol. 115) and submits that the "cost of money" proposed by the witness Chas. W. Smith is not valid to apply to the peculiar facts of the Canadian Pacific economy which is so clearly set out in Dr. Ulmer's evidence.

5. Railway cost estimates include operations outside the scope of statutory rates at which their studies are ostensibly directed.

Both railways purport to measure the costs attaching to the movement of grain pursuant to statutory rates, but in the absence of any justification their estimates also comprehend milling-in-transit services covered by tariff charges which they may alter or apply to alter at any time.

6. Railway cost estimates attribute to grain a huge expense increment entirely unrelated to that traffic.

By definition constant costs are unrelated to traffic.

The railways' expert Dr. Ford K. Edwards has stated (1) that the apportionment of constant costs over the traffic on a 'cost of service' basis is a philosophical impossibility. But before this Commission philosophical impossibility has deferred to expediency, and a large constant cost element has been arbitrarily identified with the grain movement.

7. Railway grain costs are not comparable with those computed for other allegedly deficit operations.

The railways have taken the position that no portion of system constant cost attaches to passenger service, although they make such an arbitrary apportionment with respect to grain. This discriminatory and unsound distinction remains completely unjustified.

8. Railways have shifted constant to variable costs by a discredited technique.

A transparently inflationary procedure recently repudiated by officers of the Interstate Commerce Commission (2) is the nub of the "solely related" designation upon which the railways rely to increase the costs attaching to grain. This device indicates a complete disregard of the service requirements of other traffic which may compel maintenance of branch lines whether or not grain is carried.

By these various devices, the railways have evolved a highly exaggerated cost plan for grain. The sum of their infirmities invalidates both of the railway cost estimates.

Manitoba and Alberta have also developed cost estimates for the Canadian Pacific grain movement. Although they make no pretense of arrival at THE cost, the Provinces believe their estimates to be superior to

(1) See Transcript vol. 71, page 12627-8.

(2) P. 18, Recommended report and order of Hearing examiners Howard Hosmer and Oren G. Barber in I.C.C. Docket No. 31503.

those synthesized by the railway. The Provincial cost estimates, though impaired by limitations of available data, do attempt to reflect the heavy loading and high volume characteristics unique to the grain movement. They have substituted the peculiar attributes of grain for many of the all-traffic averages upon which the railway chose to rely. To the extent that the Provincial cost estimates have succeeded in substituting the particular for the general, they have advanced closer to THE cost than did the railway.

The Provinces have also refined and improved upon the multiple regression techniques advanced by the railways; related their statistical adjustments to the facts of the export grain movement in a more specific and hence more rational manner; conservatively assumed but not embraced the shaky theory of branch line solely-relatedness; and introduced less capricious treatments of constant cost elements.

Although Manitoba and Alberta have advanced constant cost estimates to illustrate the fallacious and arbitrary development of these costs by the railways, the Provinces reject the notion that such constant costs relate to grain in any meaningful way. The Provinces, on the contrary, take the position that the only relevant economic standard upon which the export grain traffic may be judged is comprised of variable costs, i.e., those costs which are associable with the traffic itself. In our view such costs, and such costs alone, may be properly compared with the revenue received under statutory rates. If such revenue equals or exceeds such costs, even if such excess amounts only to a minute sum, then it can be concluded that Crow grain meets the economic test and is no burden to the railways.

Alberta submits that the Manitoba and Alberta methods of variable cost measurement are an improvement over those advanced by the railways, and in particular are they superior in many respects to those of the Canadian Pacific. Alberta therefore respectfully urges the Commission to adopt the Manitoba/Alberta cost estimates as the most advanced, the most refined, the most realistic of those available to it. Having done so the Commission must necessarily find that Crow grain

- (a) fully meets its variable costs, and in fact makes some contribution towards defraying the fixed costs of the railways;
or
- (b) incurs a deficit of insignificant proportions when viewed in terms of the economic benefits which the free flow of grain brings to the nation.

So much for critical comment upon the railway cost estimates.

I should like to conclude my remarks on behalf of Alberta upon the subject of Crow's Nest grain rates by urging upon the Commission:

- (1) The railways' cost studies have not established the cost of moving grain to export positions with that accuracy and certainty that must be attained to warrant the Commission in making any finding which would establish export grain as a proved deficit traffic.
- (2) There has been no costing of other traffic in spite of the earnest attempt of Manitoba and Alberta (supported by other Provinces, the grain marketing organizations and by the private grain handling companies) to secure data that would have permitted our consultants to cost other suspect traffics. Until such costing has been done, it is Alberta's submission that the Commission cannot in justice select, at the behest of the railways, one suspect traffic and make recommendations for according subsidy support.
- (3) In our submission, there can be no recommendation for subsidy in the amount of a single dollar respecting Crow's Nest grain unless and until the Commission has evaluated the benefits which accrued to the Canadian Pacific as part of the Agreement of 1897. To illustrate with two examples only:
 - (a) What has been the dollar value to the Canadian Pacific to have enjoyed the rail monopoly of the whole of

Alberta south of Calgary during the past 65 years, a monopoly still enjoyed today?

- (b) What has been the dollar value to the Canadian Pacific of the amendment made in 1925 to the 1897 Agreement whereby the railway was freed from the reduced rates on many commodities moving westbound?

It is the submission of Alberta that the Commission should find that the Crow's Nest rates impose no burden on the railways or the rate structure and it is our further submission that if the Commission finds that the over-all position of the railways is such that financial assistance to them is advisable, such assistance should in no wise be limited to or designated as applicable solely to export grain.

One final word concerning the procedure advocated by the Canadian Pacific for payment to it of the subsidy. Alberta submits that the income tax remission device be rejected. Essentially, Canadian Pacific asks that the allegedly deficient grain hauling revenues be increased by forgiving a portion of income tax which would otherwise be payable.

Why the deviousness? The railway wishes its revenue increased. If it makes out a case for assistance from the national Treasury, let that assistance be granted in the form of a simple subsidy. There is a further reason for rejecting the income tax proposal. Other corporations encounter financial difficulties, for one reason or another. Many such companies envy, I feel sure, Canadian Pacific's net rail revenue after taxes of \$31.2 million in 1958. If the income tax device proposed by Canadian Pacific is to be accepted, many Canadian companies would feel they were entitled to like treatment. A dangerous precedent would be established.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

J. J. FRAWLEY,

Counsel for the Province of Alberta.

Ottawa, Ontario,
February 10th, 1961.

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ARGUMENT ON BEHALF OF THE
GOVERNMENT OF BRITISH COLUMBIA

Your Commission has now completed the task of hearing all the oral evidence submitted at the many public hearings throughout Canada. A great part of that evidence was in the form of opinions expressed by witnesses with many different outlooks and interests.

We do not think that any real purpose could be served by reviewing the evidence in detail or by attempting to analyze the many contrary opinions which have been expressed.

The Commission's aim must be to recommend the adoption of principles which in their opinion will best serve Canada in the future so far as transportation is concerned. While you must and will undoubtedly have the historical background of the problems in your minds when making your recommendations, it is the future which is of importance to Canadians today.

We think that we can be of the greatest assistance to the Commission by dealing broadly with the principles which you must consider in your deliberations. In this argument we will attempt to state our position on the main principles which we think the Commission should recommend and we shall do so as succinctly as possible.

Following the award of a 17% increase in freight rates

by the Board of Transport Commissioners effective December 1st, 1958, a tremendous wave of protest swept across Canada. The Governments of the Atlantic and Prairie Provinces and British Columbia appealed to the Governor-in-Council to set aside the proposed increase and investigate the reasons why

- (1) a declining segment of non-competitive freight traffic should be required to bear the brunt of freight rate increases while competitive traffic took a relatively smaller proportion of freight rate increases, and
- (2) the shippers of freight should pay huge deficits incurred by the railways for operating passenger and express services and certain uneconomic branch lines, and
- (3) if the railways did not get a reasonable return for the carriage of export grain in Western Canada because of public policy, they were not reimbursed from the public purse rather than have a burden cast upon shippers of other commodities, and
- (4) the horizontal percentage increase which had been condemned by the Turgeon Commission was still the only vehicle available to the Board of Transport Commissioners and the railways to obtain increases in revenue.

The Right Honourable Howard C. Green, Acting Prime Minister, announced on November 26th, 1958 that a study of the rail transportation problem would be made and would include,

"Not only comprehensive consideration of the railway freight rate problems - including the situation of the long haul provinces in the West and in the Atlantic region - but also other specific problems which require solution if Canada's railways are to serve the national interest without prejudicing particular industries or areas."

On the 13th of May, 1959, the Royal Commission was appointed and its terms of reference are as follows:

"To inquire into and report upon the problems relating to railway transportation in Canada and the causes thereof, and to recommend solutions thereto, and in particular, without restricting the generality of the foregoing, the Commission shall consider and report upon:

- (a) inequities in the freight rate structure, their incidence upon the various regions of Canada and the legislative and other changes that can and should be made, in furtherance of national economic policy, to remove or alleviate such inequities;
- (b) the obligations and limitations imposed upon railways by law for reasons of public policy, and what can and should be done to ensure a more equitable distribution of any burden which may be found to result therefrom;
- (c) the possibilities of achieving more economical and efficient railway transportation;
- (d) whether, and to what extent, the Railway Act should specify what assets and earnings of railway companies in businesses and investments other than railways should be taken into account in establishing freight rates; and
- (e) such other related matters as the Commissioners consider pertinent or relevant to the specific or general scope of the inquiry."

These are sufficiently wide to enable a thorough study of most aspects of rail transportation problems. The job of the Commission and all interested parties was to examine the basic problems of the Canadian railways and thus attack at the root the outward manifestations of inequity which led to the appointment of the Royal Commission.

The Honourable R. W. Bonner, Q.C., Attorney-General and

Minister of Industrial Development, Trade and Commerce in the Government of British Columbia, outlined to the Commission during its sittings in Victoria on February 22nd, 1960, some of the fundamental issues which, in the view of the Government of British Columbia, should be carefully considered by the Commission. The issues were:

- (a) The rapid development of the most economic and technically efficient rail system.
- (b) Compensation to the railways for unremunerative services performed in the public interest.
- (c) Relief for such freight traffic which has been bearing undue burden as a result of public policy.
- (d) Co-ordination of transportation services to reduce costs.

(For full statement, Vol. 38, p.6111).

The submissions of the Province of British Columbia to the Commission have expanded on the points raised by Mr. Bonner in his statement to the Commission.

As a result of the growth of competing transportation media in the last twenty years the railways find themselves in a new economic and technical environment. The breakdown of the rail monopoly demands a completely new approach to every aspect of railway business activity. To a greater or lesser degree railways in North America are grappling with the problems of competition. We believe the Canadian railways have made considerable progress in meeting the new situation and, because there are only two national systems, are in a position to go

further and faster than their fragmented American counterparts.

The Province of British Columbia believes that the central task of the Royal Commission on Transportation is to formulate a national transportation policy which will speed up the transition of the railways into efficient, integrated organizations serving the national interest. By national interest we mean the economic development and welfare of all regions of our great country. Such a transportation policy must make possible that the various transportation media develop in the direction which will assure the lowest transportation costs to the Canadian people. In short, the shippers of freight and more particularly the long haul shippers of raw materials and semi-manufactured goods, must be able to take advantage of the economies inherent in an efficient railway system. Similarly with air, highway or pipeline carriers, the transportation dollar must be allocated as efficiently as possible, returning the greatest benefits to the users at the lowest cost.

With this fundamental concept in mind, the Province of British Columbia advocated a cost-oriented rate making proposal which we now intend to review and underscore.

FUNDAMENTAL ECONOMIC ARGUMENT

The British Columbia Government believes that the regulatory environment should move towards a recognition that competition in the transportation industries is gaining momentum. Unless this fact is recognized in overall transportation philosophy

and recognized quickly, then it will be much more difficult to solve the problems of the major provider of transportation services the railways. A series of short term remedies such as piecemeal subsidies, or the insistence on internal cross-subsidization of loss services, does not recognize the overall problem of pervasive competition against which there is no protection. Moreover, it must be recognized that competition is not insidious nor an evil, but is replete with bounties which, if properly directed, can bring very real and long-term lasting benefits not only to the individual transportation industries but also to the entire Canadian economy. Competition will do this, if guided by realistic public policy, by enabling motor transport, railways, airlines, water carriers and pipelines to perform the tasks for which they are best suited by costs and service. In this way, and only in this way, will the nation's scarce resources of capital, labour and management be put to the most efficient use. In other words, through competition, the nation will be able to purchase the greatest possible amount of transportation with the minimum expenditure.

Competition among producers will direct resources into the most profitable channels while non-profitable enterprises will be discontinued. Firms which earn a high profit will attract economic resources while firms with losses will repel them, and in this way resources are attracted to their most efficient employments - the occupation in which they obtain the highest possible net earnings.

For example, if there was free competition in an industry

a firm might initially earn greater than normal profits with high prices. The attempt to maintain such prices would attract competition. The competitors would be willing to pay higher than normal wages, higher than normal rates of interest, etc. in order to enter the industry to take advantage of high profits. In other words, resources would be attracted by high prices and consequent high earnings. Eventually, under pressure of competition, the earnings of all labor in the industry would be the same, the earnings of capital would be equalized, and prices paid by the consumer would be driven down to the costs of production (including normal profits). When this point is reached, i.e. when prices are equal to the costs of production and earnings of a given resource are no more than its costs in all employments, the resource is correctly allocated and the resource is making its maximum contribution to the national product.

Any interference with this allocative mechanism of the price system leads to inefficient allocations of economic resources and less than maximum contribution to the national product. There are many such obstacles and many such inefficiencies which are largely unavoidable in a complex industrial society. Labour immobility will prevent workers attaining the highest possible earnings for example. Some resources may be indivisible so that large units of a resource may have to be used rather than small ones, thus leading to only partial utilization. There may be ignorance of the returns available

in alternative employments, there may be an attempt to introduce monopolistic practices such as market division, or there may be interference with the price mechanism itself, for example by the government or by groups of resource owners or producers.

A notable aspect of competition, in which there is no such interference with the free working of the price mechanism, is that price equals the cost of production. Through the prices paid, and when prices equal costs of production, consumers purchase the products and services of low cost producers and ensure, by lack of patronage, that high cost producers are not encouraged. If consumers are not made aware of costs of production through the prices they pay, they will be led to patronage of the "wrong" firms from an economic point of view. This is to say that when costs are shrouded the high cost rather than low cost producers may get business - thus leading to a waste of scarce resources.

As a first approximation, then, it can be said that if economic efficiency is to be achieved in transportation, prices should reflect as nearly as possible the costs of performing any service. This indicates that subsidies will induce economic inefficiencies through resource misallocation. Subsidies are of two types: (a) cross subsidies from routes or services from which surplus earnings accrue, and (b) direct subsidies from national revenues.

(a) Cross subsidization.

Cross subsidization may be said to occur when any transportation route or class of service is not recovering its variable costs and when the resulting difference between revenues and variable cost is recouped from other routes and services. Such cross subsidization is not possible where there is effective competition. Subsidies of this nature are to be found, for example, in the shifting of passenger losses to the freight shippers.

Examples abound in rail transportation where losses on export grain, branch lines and passenger services are made up from more profitable operations. Such cross subsidization leads to a compounding of resource misallocation. In the first place, on the routes and services where rates are less than costs transportation users patronize the low price service which, in fact, may be provided at a higher real cost than potential competitors could do if given the opportunity. High cost branch lines, for example, may be kept in business through low prices, where correct resource allocation would transfer the traffic to trucks. Passengers or express traffic may be carried by rail where, in fact, the real costs by air may be less. On the routes and services which are called upon to supply the subsidies customers are asked to pay prices which are more than costs. Here a further misallocation of economic resources is apparent. Customers will be encouraged to use alternative forms of

transportation with higher real costs but with lower prices. This over-pricing has, without doubt, encouraged the use of long distance trucking in Canada and the use of private trucks. This is certainly cheaper to the shipper or passenger but is not an efficient allocation of resources as it does not represent the lowest cost transportation available. The result is that more resources than necessary are being used to provide transportation and the country is not economizing its transportation dollars.

The attraction of traffic by artificially low prices subsidized from other services not only harms potential competitors but drives existing ones out of business. Nevertheless, no matter how much cross subsidization is relied upon to retain or attract traffic, the area of competition is growing rapidly. The provision of the subsidy from non-competitive areas becomes less and less feasible with the passage of time. However, for traffic which is not amenable to competition - traffic which can only move by rail - the burden will continue to grow. Industries which subsidize competitive traffic find that present markets are jeopardized, new markets cannot be sought after, and activity is kept at a level which is lower than necessary.

For all these reasons British Columbia takes the position that cross subsidization of transportation service is not only harmful to transportation industry as a whole but to the entire Canadian economy, in that misallocation drains away scarce

economic resources.

(b) Direct subsidization.

Direct subsidization occurs when the government, either through direct or indirect financial assistance, enables transportation services to be provided at less than cost. Again there are numerous example, from the provision of air navigation facilities to the various railway subsidies.

Direct subsidies result in a redistribution of national income so that the receivers of benefits are not the same as the benefactors and the public may wish to devote resources to things other than transportation given free choice.

Direct subsidy has the great advantage over cross subsidy in that misallocation of resources is kept to a minimum. Routes and services which contribute less than costs result in misallocation, but a second misallocation does not occur as other routes and services are not then asked to pay more than costs. From this point of view a direct subsidy is much preferable to cross subsidization.

Direct subsidies, especially those given to one form of transportation to the exclusion of others, have many disadvantages. A direct subsidy given to one form of transportation which is in competition with another will encourage shippers to use the more costly agency - with resulting economic inefficiency. Various examples of this exist in Canada (Bridge Subsidy and Maritime Freight Rates Act) and a more correct allocation of

resources would result if the subsidy was given to all forms of transportation. When the provision of less-than-cost service is made possible not only is there an uneconomic expansion of activities at the expense of others, but inefficiency is encouraged. Any subsidy which is unrelated to efficiency must therefore be suspect from the economic point of view. A transportation industry - management, labour and capital - will continue to be inefficient when it is realized that losses can be recouped from the government. It is therefore urged, on the grounds of efficiency and in the interests of long-term resource allocation, that subsidies for uneconomic services be of a declining nature. An example of a declining subsidy is the early air mail payments to Trans-Canada Airlines and to subsidy payments to U. S. Airlines. Where transportation services are now operated at a loss but where it appears that long-run economies will make them low cost and profitable, it would seem that direct subsidies on a declining basis, conditional upon increased efficiency, would be in the interests of economic efficiency. Such a subsidy would induce transportation operators to concentrate their services on their most economical routes, rather than dissipate their resources over all routes, high cost or low. Subsidies should only be granted because of compelling national interest.

In a competitive situation, as prices reflect the costs of service, profits are sufficient, but not more, than necessary to reward producers, resources are attracted into their most

efficient employments, investment is directed into the right channels, the maximum quality and quantity of service is produced at the lowest cost, excess capacity is eliminated, the weakest competitors are driven out, and the industry is thereby kept efficient. In other words, there is perfect allocation of economic resources and a pricing system more nearly related to the costs of service must be regarded as the only major remedy available for the current ills of the Canadian transportation system. Correct pricing policies should eventually achieve all that can be accomplished by subsidies and at less cost to the public and to the shippers.

Maximum rates.

If perfect competition were present throughout the transportation industries the regulation of rates and fares would be superfluous as exploitation would not be possible and predatory pricing could not occur if losses could not be made up from other sources. Although this perfect degree of competition may never be reached, there is certainly at the present time a large area of traffic in which at least two forms of transportation can compete. Where this is so, competition becomes the automatic regulator of maximum rates and formal regulation is not required. The existence of this competition is evidenced by the multitude of competitive rates and agreed charges which are growing daily. Other areas of traffic exist, however, for which there is transportation by only one mode, either because of the nature of the commodity or because the costs of any alternative means of

transport would be so far above the selling price of the commodity that it could not be utilized. It is doubtful whether some traffic will ever become competitive and sought after by more than one form of transportation. An example would be lumber from Vancouver to Winnipeg where the trucking costs alone would at least equal the selling price - leaving nothing to cover the costs of production.

It is a proposal of the Province of British Columbia that a shipper who felt that he was captive could put his case to the Board of Transport Commissioners who would decide whether or not he was entitled to maximum rate protection. The concept of a captive shipper was evidently in the mind of the Canadian National Railways when they said:

"Canadian National recommends that, for reasons given in Chapter II of this submission, Section 328(1) be amended to give the railways freedom to set rates which must be compensatory and published for the information of all concerned, without any overriding power of disallowance being vested in the Board, except where a shipper can show that no practical means of transportation other than the railway is available to him."
(Vol. III, p. 18494 - Hart in chief).

In such instances there is clearly room for exploitation by imposing rates according to what the traffic will bear, and the greater the departure from cost related rates the greater the misallocation of economic resources. Here there is a clear need for maximum rate regulation, the only question being what should constitute the maximum.

In 1950 British Columbia presented a brief to the Turgeon Commission in which it was advocated that freight rates in Canada should be based more closely on costs than had been the case in the past. While it may be assumed that the railway companies have always been conscious of their overall costs of operation so far as could be determined in 1950 this was a very secondary consideration in the making of rates. Such tests as were made at that time were really not "cost" tests at all but rather "revenue" tests. If a rate was found to be above the average revenue per ton mile it was assumed that it was above out-of-pocket costs and therefore acceptable.

While the cost of service basis of rates had been discussed for some years prior to 1950 it had not found any general acceptance. At that time the costing of services was a very time-consuming process and could only be done in any event on a very rough and ready basis. Further, while competition was beginning to make inroads on the revenue position of the railways, it was not the pervasive threat that it is today.

The Commission did give some consideration to this submission but rejected it, saying:

"CONCLUSIONS AND RECOMMENDATIONS

The proposal submitted by British Columbia has not been shown to be a practical one. The amendment is expressed in terms which might have a more far-reaching effect than appeared to be in contemplation by Counsel. It might, indeed, lead to much higher rates than at present being charged on low-valued primary commodities. It is important that these rates should be kept relatively low. Shippers have come to

depend upon them and it would be a dangerous experiment to upset the present value of service principle in favour of the untried cost of service principle. The proposed amendment cannot be accepted."

In 1961 we find the situation quite different. New techniques have been developed and the most outstanding has been the costing of the grain movement done by both railways. Further, Mr. Hart told the Commission that the Canadian National Railways has done many costing studies. The railways today face competition from other transportation agencies which affect or potentially affect a very large part of their traffic. We venture to suggest that the trucking industries might have been a much greater threat in respect to some types of traffic if they had not followed the railway pricing system as closely as they did.

Airlines are now practically eliminating long distance passenger traffic so far as the railways are concerned. It was interesting to note in a recent article written by Gordon McGregor, President of Trans Canada Airlines, that he said:

"All fares were calculated on a unique cost curve principle, bringing the charge on each route segment into closer relationship with the actual cost of operating over that route. More than 2,200 individual fares were calculated in this manner."
(Montreal Gazette, January 14, 1961, Annual Review, p.31).

It has even been suggested at the hearings before this Commission that all railway traffic is potentially subject to competition or will be in the not too distant future.

Under these circumstances it is our submission that the

time has arrived when a new basis of rate making must be adopted. While we do not suggest that all rates be changed overnight, we do say that costing techniques have developed sufficiently that a change can now be undertaken without unduly disrupting the present rate structure.

The Railway Act has always provided for just and reasonable rates - to both railways and shippers alike. The jurisprudence has developed that the whole body of rates are only just and reasonable to the railways if they provide sufficient overall revenue to the railways to ensure a healthy financial picture - as to the shipper the justness and reasonableness of his rate depended on a comparison with other rates for the same or similar commodities and the ton mile revenue, etc. from such rate as against other rates.

Such a test of reasonableness may have been reasonably satisfactory in the past but under present conditions is completely unacceptable. Since competition is now so pervasive and since competitive rates must be related to costs, it is our submission that the only proper test today must be cost. No shipper should be given a rate below the out-of-pocket costs of rendering the service (and there appears to be a very general acceptance of this principle not only by the railway management but others). Nor should a shipper be required to pay in excess of the total cost (as nearly as it can be determined) of rendering the service to him. This total cost will include a fair return by way of profits to the railways.

The accepted test of reasonableness in the past has been a subjective one; today an objective one is required. This can only be determined on a basis of cost. The present test is in fact a circular test and if all rates except one were eliminated we would have in fact no test whatsoever.

Our submission is that where competition is not the regulator of rates (and where competition in fact does exist, we submit it is the best regulator), there is still a need for maximum rate control. Further, that such maximum rate control should be related to costs. If a shipper does pay his fully allocated costs - including a reasonable return to the railway - is it reasonable to permit the railways to charge him more? We definitely say no.

The railways have suggested in their grain cost submissions that they think that fully allocated cost of handling grain will produce a just and reasonable rate. If this is so - and we agree with the railways' submission in this regard - why is not this also just and reasonable as to all other rates? Surely they cannot be heard to say that while fully allocated costs are satisfactory for grain rates the maximum for other rates must be higher.

The full argument in favour of cost of service and the need for a minimum to maximum rate control is set out in Part 2 of our brief and in the evidence presented by Mr. Hughes. We earnestly urge that the utmost consideration be given to Mr. Hughes' evidence which we submit received considerable acceptance

from other witnesses appearing before the Commission.

Again we say it is the principle we are concerned with at this time. We know that there are very practical problems to be solved before all rates can be related to costs. It would only be natural for railway officials to emphasize these problems. They have made rates in the old manner for so many years that they do not want to change. Unless a very definite recommendation is made by your Commission to the effect that the various provisions of the Railway Act dealing with tariffs and tolls should be substantially revised to ensure that the principal weight in rate making will be on costs, we are satisfied that no change will be made. Every rate should be tested in due course for justness and reasonableness on a basis of cost.

During the hearings we suggested that maximum rates might be fixed somewhat above fully distributed costs if necessary to protect the railways' revenue position. (Transcript, Vol. 78, pp. 13788-9). After further consideration we have come to the conclusion that this should be permitted only on an interim basis and that once the fully distributed costs of any traffic have been determined that should be the maximum. The changes necessary will require some years to achieve but the policy should now be adopted that in due course full distributed costs should be the ceiling for captive traffic.

SOME CONSEQUENCES OF A COST ORIENTED
RATE STRUCTURE

It is the submission of the Province of British Columbia that the Canadian Freight Rate Structure must be reoriented in its entirety from a value of commodity to a cost of service basis. When a decision in principle is made to adopt a cost-oriented pricing system certain consequences must necessarily follow, and we desire to recapitulate briefly some of the more important.

(a) The existing Canadian Freight Classification would be replaced by a new document in which "loadability" of a commodity would be the main criterion for rating. This concept is based on the well known fact that the more of a commodity that can be loaded in a freight car the lower the unit cost. Thus the new Classification would provide rates and incentives to encourage the greatest utilization of car capacity. This approach is not new to the Canadian freight rate structure but is applicable at present mainly to truck competitive rates. Our proposal would cover all rates and would result in lower costs to the shippers and higher net revenues to the railways. The failure on the part of the railways to implement such a proposal will of course further encourage private transportation media and enhance the possibility of resource misallocation.

(b) Minimum rates would be set for all traffic based on long run out-of-pocket costs. It is difficult to ascertain at present whether the regulatory minimum for competitive rates is long or short run out-of-pocket costs. To prevent predatory

inter-agency pricing the universal minimum rates proposed by British Columbia would assure that no traffic was carried at less than long run out-of-pocket costs.

(c) Maximum rates would be set for non-competitive or captive traffic. The maximum rates would approximate the total cost of movement. There would be no maximum rates for competitive traffic - an ever increasing proportion of the total.

(d) General revenue cases and horizontal percentage increases would no longer be required under the British Columbia proposal. The railways would be free to quote any rate on competitive traffic above their minimum of long run out-of-pocket costs. They would be restricted only by the maximum rate schedule on captive traffic. If an increase in total rail costs should occur both the minimum and maximum rates would have to be raised but the captive traffic would only bear its fair share of the increased costs. It would not be possible to load the bulk of the revenue requirement onto captive traffic as the railways endeavor to do now. Increases in costs would be allocated by the appropriate output unit to the particular segment of rail work which incurred the additional cost.

When a cost such as income tax cannot easily be broken up into variable and constant costs, the new technique of multiple regression analysis will assist in establishing the variable portion. The constant element would then be recovered by "what the traffic will bear", subject only to the maximum

rate on captive traffic. Approval and supervision of the Board of Transport Commissioners will only be necessary for minimum rates on all traffic and maximum rates on captive traffic.

(e) As the Board of Transport Commissioners would no longer have to authorize maxima for competitive traffic, and as captive traffic would be subject to the maxima of fully allocated cost, there would be no need for the retention of the Requirement Formula. The railways could earn as much as they wanted subject only to maximum rates on captive traffic.

(f) The Long and Short Haul Rule and the One and One-third Rule would disappear as protection for intermediate traffic would be based on cost.

(g) Subsidies such as the "Bridge Subsidy" would be eliminated. The whole approach to subsidies would be on the basis of cost and public necessity. Arbitrary hand-outs such as the "Bridge Subsidy" would be integrated into an overall national subsidy policy related to increased efficiency or compelling national interest.

(h) The regulatory body - the Board of Transport Commissioners - would require the development of a strong cost section to check the rail cost calculations.

GRAIN RATES

A great part of the Commission's public hearings involved a consideration of the rates on grain. It would appear to us that it cannot be questioned that there is a burden placed on other traffic as a result of our national policy in this respect. Just how great this burden is must of necessity be a very difficult task to determine.

It is not our intention to enter into a discussion of the various cost studies which have been presented to the Commission. That the Crowsnest rates are a burden is in our submission very obvious from even a cursory examination of the situation since the Turgeon Report. Freight rate increases since 1950 have been based on increased costs over those existing prior to the particular application. The increased costs applied to all phases of the railways' operations. It was not only the engineer on a train hauling lumber that received a wage increase but also the engineer on a train hauling grain. Since the grain rates could not be increased someone else had to bear the burden of the increased wages to the second engineer. It may be conceded that since the Canadian Pacific Railway Company has not reached its permissible level of earnings, some of the burden may have been borne by its shareholders. However, we must ask ourselves whether this situation would not have existed even if the grain rates had been subject to increases. So far as the Board of Transport was able it was granting an increase which was estimated to reimburse the railways the full amount of their increased costs.

For many years no official comment was made in respect to this burden until finally it became so apparent that the Board of Transport Commissioners made the following comment in its Judgment of December 27th, 1957:

"These factors indicate that it is the freight rate structure itself which is largely responsible for the situation in which the railways now find themselves, rather than any defects in the 'requirements' formula. This difficulty is intensified by the fact that the grain traffic within western Canada is carried at statutory grain rates which cannot be increased and which yield only one-half cent per ton mile, compared with the general average including statutory grain of about 1.4 cents per ton mile, or approximately 2 cents excluding statutory grain. The increases required through increased cost of operation must therefore be placed on other traffic. The statutory grain rates, of course, are the result of a contract made in 1897 between the Canadian Pacific and the Government of Canada, for which that railway received certain considerations, and as pointed out by the Royal Commission on Transportation in its report in the year 1951, these rates are entirely subject to the jurisdiction of Parliament. The Board must take notice of this fact and govern itself accordingly."

(Pages 28 and 29, Pamphlet copy of Judgment).

And again in its Judgment of November 17th, 1958
is said:

"Grain Rates

In its December 27, 1957 Judgment the Board noted that it has no power to increase the statutory rates on grain and flour. This is certainly so, and it follows that no part of rate increases required by the railways to meet increased cost of operation, including such part of that cost as is incurred in the carriage of that traffic, can be placed by the Board on those statutory rates. Evidence was given to the effect that over a quarter of the revenue ton miles on Canadian Pacific are in respect of grain and grain products carried on such statutory rates."

(Page 18 of Pamphlet copy of Judgment).

British Columbia agrees that at the present time it is in the national interest to assist the farmers to export their grain. It is our submission that such assistance should be strictly limited to such grain as is in fact exported from Canada.

The Railway Act (Section 328) only applies to "grain and flour." If the present tariffs of the railways are examined it is found that many other items are now given the same rates. Mr. Edsforth was examined in regard to this (See Transcript, Vol. 13, pp. 1787-1796), and particularly on page 1795:

"Q And there are a great many products that would not come under the heading of grain and flour?

A Yes, there are commodities that would not be considered as grain or flour - a few of them."

And again on page 1796:

"Q I am not criticizing the railway at all and I do not want to give you that opinion, I just want to get to the fact that there is now under this tariff a great many items that could not be considered under the description of grain and flour?

A There are quite a few, yes."

It is our further submission that domestic grain rates are at the present time unreasonably high. For example, the export grain rate from Calgary to Vancouver is 20¢. The railways say they should receive 40¢ which would return them their fully distributed costs and such a rate would be just and reasonable.

Yet on the other hand the domestic rate is 70¢ (less the "roll-back" subsidy at the present time). How can that possibly be a just and reasonable rate?

Mr. Roberts, under cross-examination, had this to say:

"Well, generally speaking, the cost I don't imagine would be any different."

(Transcript, Vol. 28, p.4147).

He was there speaking of the costs of moving domestic as compared with export grain to Vancouver.

We further call the Commission's attention to the full discussion of this situation which is set forth in the evidence given by Mr. Creelman on behalf of the Surrey Co-operative Association, which is found in Vol. 41, pp. 6802-6835 of the transcript. It is our submission that commodities with the same cost characteristics should be charged the same rate, and if fully distributed costs are considered as a just and reasonable rate for export grain, it is also just and reasonable for domestic grain.

We now come to the vexed question as to how the subsidy is to be paid. The trucking interests suggest that it be paid to the shipper himself so that he can decide what means of transportation to use. However, in our submission the sheer weight of the administrative problems which would arise if such a policy were adopted would appear to make this impractical. We think that for the foreseeable future the movement of grain in

Western Canada must depend on railway transportation to the greatest possible extent. This does not overlook the fact that there are now some movements by truck and this may increase in the years to come. Grain is a bulk commodity and as such we are of the opinion that Canada will make the most economical use of its transportation facilities if grain is primarily moved by rail.

If, on the other hand, trucks should at any time be required by statute to haul grain at less than fully distributed costs, they should be subsidized in the same manner as the railways.

PASSENGER LOSSES

In the 21% case the Province of British Columbia urged on the Board of Transport Commissioners that passenger losses should not be cross-subsidized by the freight traffic, and also that accounting systems should be adopted to show what the amount of such losses, if any, were. The Board at that time dealt with the subject in the following language:

"It is generally recognized that freight services are relatively more profitable than the passenger services. The rates of both classes of service are subject to regulation under The Railway Act. The freight and passenger services are both essential to the respondents and to the public in general. The railways are required to furnish both services. They are interrelated. And revenue losses or deficits on the one must necessarily be compensated by earnings on the other if the railway carriers are to continue to operate. I am unable to agree with the submissions made here that we can authorize no increase in freight rates, if such increase, to some degree, be necessary to correct deficiencies in aggregate

earnings growing out of the inability of the passenger service to meet its full share of the revenue burden. This is the view taken of the matter by the Interstate Commerce Commission of the U.S.A. in a number of decisions. Reference is made to some of the judgments of that Commission."

(Page 4, Pamphlet copy of Judgment).

Since that time the problem has been compounded. The railways have been able to advise your Commission as to the staggering out-of-pocket losses incurred on the passenger service in 1959. Mr. Saunders has made his own estimate of these losses and he finds them to be even more substantial. The estimates before the Commission for the Canadian Pacific Railway vary from \$29,000,000 to \$43,000,000 and for the Canadian National Railways from \$41,000,000 to \$102,000,000. It has been suggested that there was a time when the passenger services were operated at a profit and that since management is doing everything in its power to reduce the present losses the freight shippers should in the meantime make good whatever those losses are. Now we have stated that this Commission must look to the future. We think that it is agreed that the passenger traffic which can be economically provided by the railways in the future is limited and that in due course their plants will be adjusted to handle only such traffic.

The Canadian Pacific Railway has stated through Mr. Sinclair:

"Canadian Pacific is not asking this Commission for a subsidy for any problem it has in passenger traffic."

(Transcript, Vol. 10, p.1291)

which would mean that the losses would continue to be a burden on the freight shipper.

Passenger service can never be entirely eliminated and many points in Canada will require passenger services which will have to be provided at a loss. It is in the national interest in the broadest sense of the term that this be done. It is not a question as to whether or not it is in the national interest to provide service for one more point, but rather that all points now served by the railways are entitled to some means of passenger transportation, and if there is no reasonable substitute for the railway service the railways should be required to continue their present service.

In our opinion passenger services which are required in the national interest should be subsidized by the national treasury and not by the freight shippers. We do not conceive of this subsidy continuing indefinitely, but in spite of the best efforts of railway management it may continue for some years, although on a declining level. Further we say that if the railways do not wish to accept a subsidy for this service, then such losses as they may have should be eliminated when considering the fixing of freight rates; in other words, let the shareholders bear the burden and risks of managerial discretion.

OTHER NON-COMPENSATORY SERVICES

Under this general heading we include branch lines,

and rates and services other than statutory rates and passenger services which the railways may be required to maintain in the national interest or because of public policy. The evidence before this Commission shows that there are many such services which are operated at less than out-of-pocket costs. Again they place a burden on other shippers unless they are being directly subsidized by the Government as in the case of the Newfoundland ferries. For reasons previously set forth in this argument we maintain that those services should be subsidized directly by the Government to the amount of the full distributed costs of such services.

THE APPLICATION OF DIRECT SUBSIDIES

It is clear that the railways will have to accelerate their program of technical and structural modernization. We affirm that this can be most effectively accomplished by a cost-oriented rate making system which will force the railways to concentrate on the most profitable services and divest themselves of services which can be performed more efficiently by other media of transportation. However, we concede that such a program will take some period of time (5 to 10 years). In the meantime the railways require financial assistance. The question is how shall such assistance be given so that the basic program will assist the railways to move more rapidly towards an efficient and economic organization.

The Province of British Columbia favours a direct subsidy from the Federal treasury for uneconomic rail services

which must be continued because of public convenience or necessity in the national interest. In this category we include uneconomic branch lines, passenger and express services. In the period of time required to adjust these services to a paying basis or to eliminate them, other services should not be forced to cross-subsidize them.

Similarly other traffic should not be compelled to subsidize export grain losses. The difference between the current rate and a just and reasonable rate related to cost should be made up by the National Government as long as the export grain rates are frozen at the statutory level.

The Royal Commission was instructed to investigate inequities in the freight rate structure. As we have pointed out, one of the most fundamental inequities is the cross-subsidization of some rail services by others. The Federal Government realized this when they provided a \$20,000,000 subsidy in 1959 for non-competitive traffic to compensate for that traffic bearing an unfair proportion of increased cost due to cross-subsidization of other rates and uneconomic services. The Government implicitly recognized that captive traffic required relief. We strongly recommend that this relief to the captive shipper be continued in any proposed scheme of subsidy until the railways can publish maximum rates for captive traffic based on fully allocated costs.

In addition to subsidies for uneconomic services aforementioned the National Government provides subsidies for

commodity movements and regions. Subsidies are paid for the carriage of feed grain, coal, the Maritime Freight Rates Act and payments to the Canadian National Railways covering losses on rail and ferry operations in the Atlantic Provinces. (See Vol. 28, pp. 4169-73, cross-exam. J. Roberts). Such subsidies are paid in the national interest. They are not calculated, however, on a proper economic basis of cost but are arbitrary amounts. For example, the feed grain freight rate into British Columbia from Alberta is three times the export rate, yet the costs of movement are the same. Either the export rate is too low or the rate on feed grain is far too high. At the present time some of the difference between the two is paid by a direct subsidy so far as feed grain is concerned. Rates and subsidies of this character must be related to the cost of producing the service, and a fair and reasonable price for the service in our submission should not exceed fully allocated costs.

The only subsidy which is completely devoid of economic purpose is the so-called "bridge subsidy." In our submissions the Province of British Columbia has urged the repeal of this subsidy.

The Turgeon Commission considered the "bridge area" as "a long stretch of unproductive or only partly productive territory" (Turgeon Report, p. 253). There are other "long stretches of unproductive, etc." territories in Canada which are equally as important as links in the railway system of Canada, for instance, Revelstoke to Calgary, and yet no subsidy is

provided or asked for traffic over this vital link. In fact at one time shippers were charged extra for freight moving over this part of the railway, and one of the main reasons given for the differential was the low density of traffic at that time.

At the present time producers and manufacturers in British Columbia compete with producers and manufacturers in Ontario and Quebec for many items in the prairie markets. Because the freight rate from Ontario and Quebec enjoys the subsidy while the manufacturer in British Columbia has no such assistance the market area in which the British Columbia manufacturer has the benefit of his geographic position (i.e., being closer to the market) is restricted.

Certainly the volume of traffic originating in the bridge area per mile of track on both the C.P.R. and the C.N.R. does not indicate any need for a subsidy in respect to this particular part of the line. (See B. C. Brief, Part I, p.34, and as to the density of traffic see Saunders Brief, Vol. 1, pp. 54-66).

Let the Government incorporate the \$7,000,000 paid under this subsidy in an overall subsidy for captive traffic and thereby eliminate this discriminatory piece of legislation.

Any program of subsidies recommended by the Commission should be in large part a means to an end. Essentially they must cushion the social and economic consequences of the rapid changes in our transportation systems. They should apply to

all media of transportation where possible so that the most efficient media will prosper and the inefficient be eliminated.

We recommend that all the direct subsidies affecting transportation should be consolidated under one administrative body which should be required to direct the national transportation policy to ensure the most efficient transportation plant for Canada. Its duties should include a continual review of the non-compensatory services to ensure that the maximum economies are being effected, thereby reducing the amount of the subsidies, and to recommend changes in our national transportation policy in keeping with changing conditions. It would in effect become a planning board of our national transportation policy.

ONE AND ONE-THIRD RULE

The Province of Alberta has suggested to the Royal Commission that the one and one-third rule modifying long and short haul discrimination be applied to agreed charges from Eastern Canada to the Pacific Coast as well as other trans-continental rates. It is our contention on the contrary that the one and one-third rule should be eliminated from the Railway Act. We believe that the reasoning behind the one and one-third rule is fallacious.

If a rate from Eastern Canada to Alberta is just and reasonable (under the current illogical procedures) the higher rate from Eastern Canada to Vancouver is also just and reasonable. If, however, due to water competition at B. C. coastal points

the railways are forced to reduce the rate to Vancouver, the rate to Alberta is still just and reasonable. The one and one-third rule was a sop to popular clamour in Alberta that they were being discriminated against because of lower competitive rates to B. C. coastal points.

The net result of the one and one-third rule was to force the railways to cancel some of the water and market competitive rates to Vancouver; in fact the railways had to relinquish traffic at Vancouver to competitors, weakening their overall net position and thus putting pressure on other rates to bear a greater share of the increased costs. We believe the measure of any freight rate discrimination against Alberta or any other Province is the result of cross-subsidization of uneconomic services. The solution to this problem has been outlined above in some detail.

The receiver of freight in Alberta is entitled to a just and reasonable rate based on the standards that are for the time being applied to the other rates of the same category. The Board of Transport Commissioners has consistently refused to judge the justness and reasonableness of a non-competitive rate by comparison with a competitive rate - you are not comparing like with like.

What Section 337 of the Railway Act does is to enact that intercontinental competitive rates are to be subject to conditions which do not apply to other competitive rates. In

our submission this is nothing but discriminatory legislation - discriminatory mainly against the Province of British Columbia. There are competitive rates in Alberta that are less than one-half of the rates on the same commodity for similar mileages in other parts of Canada. (See evidence of Dr. Harries, Transcript Vol. 97, pp. 16533-4). No one has suggested any special rules as to such competitive rates in Alberta.

Dr. Williams, a distinguished witness called on behalf of the Province of Alberta, had this to say on the principle involved in this issue:

"A Well, this is a question that is not easy to answer in the abstract. If one has a condition in which imported commodities can be laid down on the British Columbia coast on a basis that would not permit Canadian sources of production to meet that competition except with reduced rates, then it appears to me that so long as the rates that are used for that purpose are in the first place compensatory rates, in the sense that they return more than the added cost of handling that traffic, whatever it may be; and, secondly, are as high as is possible in the light of the import competition to sustain a Canadian participation in the market, then no one could properly take objection to those rates, nor would it follow that because the rates had been reduced in that competitive circumstance rates elsewhere would require to be reduced."

We strongly urge on this Commission that it should recommend that Section 337 of the Railway Act be repealed and the submission by the Province of Alberta that such a provision should be applied to agreed charges be not entertained.

REGULATION OF INTERPROVINCIAL AND INTERNATIONAL
HIGHWAY TRANSPORT

The trucking industry is a vital part of the transportation plant of Canada and a truly national transportation policy can only be effective if trucks are treated in the same manner as railways. However, when it is realized that the greater part of the trucking operations in Canada, namely intra-provincial and private trucking, do not come within the jurisdiction of the Federal Government, it is difficult to make any meaningful recommendations to this Commission.

When the Privy Council held in the Winner case that the Federal Government had complete jurisdiction over inter-provincial and international highway transport, the Federal Government saw fit to delegate their authority to the Provincial Government Regulatory Boards. It was to be expected that the different Provincial Boards across Canada would deal with this problem in a variety of ways and we are not aware as to whether or not the Provincial Boards have exhausted every possibility to ensure a uniformity of administration in all parts of Canada. It is our recommendation that the Federal Government should take every step possible to ensure the uniformity of administration through the Provincial Boards, but if this does not prove to be effective, then the Federal Government should assume its full responsibilities for regulation in this field and give authority to some Federal Regulatory Tribunal for this purpose.

CONCLUSION

The basic industries of British Columbia are heavily dependent on rail transportation. Specifically we refer to our forest, mining and agricultural industries. Not only is our basic production functionally tied to rail because of the nature of the product but because of the long hauls involved to United States and domestic markets. The weighted average haul per ton of commodity rated traffic shipped from British Columbia is more than twice the national average - and the cost of shipments is 193% of the national average for the same commodities. (Vol. 41, p. 6915). It is quite understandable why British Columbia is so concerned about the efficiency of our railways when we have the longest hauls and highest rail transportation charges of any Province in Canada.

In 1957 the average haul per ton of forest products (mainly lumber and plywood) originating in British Columbia was 1768 miles. The average haul of agricultural products (mainly fruit) out of British Columbia in the same year was 1283 miles. Similarly the average haul of manufactured goods into British Columbia was 1714 miles. This compares with the national average haul per ton for carload shipments of 325.6 miles. (Vol. 41, pp. 6909 and 6914, Tables VIII and IX).

Because the bulk of rail shipments from British Columbia are composed of primary or semi-processed materials the lowest possible freight rates are required consonant with the cost of the service. It is precisely in the movement of heavy materials

long distances that the economics of rail transport are most important. British Columbia production must obtain the advantages of cheap long-haul transportation without imposing burdens on other commodity movements. In short, it is our contention that long-haul products should not be forced to pay more than their total costs of movement and certainly should not be called upon to cross-subsidize other rates and services. We assert that if cross-subsidization is eliminated no commodity will pay more than its total costs and this is a just and reasonable charge for the services rendered to a shipper by the railways. We also realize that this is an ideal condition which we must try to approach and, in the process of which, correct the real areas of discrimination and inequity in the freight rate structure.

In the foregoing we have attempted to set forth what we consider to be the important principles which should be recommended by your Commission. We think that we have approached the problems bearing in mind not only the difficulties and problems which the railways face in this period of transition, but also the difficulties and problems of the users of the railway services. Both the railways and their users are equally concerned with the future economic development of Canada. Railways can only prosper if the users prosper and expand under reasonable economic conditions. Canada has developed into a great nation in spite of our great distances and relatively small population. We possess a transportation

plant capable of ensuring that this development continue and even accelerate in the future. Let us now ensure that the most economical use is made of this plant by adopting policies for the future which will bring the greatest possible benefits to all parts of our country. This will require fundamental changes, but if we should delay in making such changes the problems of the future will undoubtedly be multiplied manyfold.

ALL OF WHICH IS RESPECTFULLY SUBMITTED



Counsel for the Province of
British Columbia

Vancouver, B. C.,
February, 1961.

